

22 MARCH 1948

I N D E X

	<u>Page</u>
Summation by the Defense (cont'd) by Mr. Brooks	44648
<u>MORNING RECESS</u>	44718
Summation by the Defense (cont'd) by Mr. Brooks	44720
<u>NOON RECESS</u>	44766
Summation by the Defense (cont'd) by Mr. Brooks	44767
<u>AFTERNOON RECESS</u>	44821
Summation by the Defense (cont'd) by Mr. MIGITA	44823

1 Monday, 22 March 1948

2 - - -

3
4 INTERNATIONAL MILITARY TRIBUNAL
5 FOR THE FAR EAST
6 Court House of the Tribunal
7 War Ministry Building
8 Tokyo, Japan

9 The Tribunal met, pursuant to adjournment,
10 at 0930.

11 Appearances:

12 For the Tribunal, all Members sitting, with
13 the exception of: HONORABLE JUSTICE MYRON C. CRAMER,
14 Member from the United States of America and HONORABLE
15 JUSTICE E. H. NORTHCROFT, Member from the Dominion of
16 New Zealand, not sitting from 0930 to 1600; HONORABLE
17 JUSTICE HENRI BERNARD, Member from the Republic of
18 France, not sitting from 1500 to 1600.

19 For the Prosecution Section, same as before.

20 For the Defense Section, same as before.

21 - - -

22 (English to Japanese and Japanese
23 to English interpretation was made by the
24 Language Section, IMTFE.)
25

W
h
a
l
e
n
&
M
o
r
s
e

1 MARSHAL OF THE COURT: The International
2 Military Tribunal for the Far East is now in session.

3 THE PRESIDENT: All the accused are present
4 except MATSUI, SHIRATORI and UMEZU who are represented
5 by counsel. The Sugamo Prison surgeon certifies that
6 they are ill and unable to attend the trial today.
7 The certificates will be recorded and filed.

8 Captain Brooks.

9 MR. BROOKS: If your Honors please, in the
10 KOISO summation the words or figures and matters
11 enclosed in parenthesis will not be read at the
12 lectern, nor Index pages A to G. I ask that the un-
13 read portions be incorporated in the transcript as if
14 read. The documents mentioned by the prosecution in
15 the KOISO summation, pages LL-1 to 35, commencing on
16 transcript page 41,165 are described at pages A to G
17 for the convenience of the Court with relevant comments.
18 It will be noticed that KOISO is not named in the
19 majority of the documents mentioned by the prosecution
20 in the KOISO summation.

21 INDEX TO KOISO SUMMATION

22 I. Charges against KOISO (Prosecution
23 summation pages LL-1 to 35) (T. 41,165)

24 Section 1 - Count 1 - Conspiracy

25 Section 2 - Counts 2, 6, 18, 27 - Manchuria

1 Section 3 - Counts 3, 6, 29 and 48 - China

2 Section 4 - Count 5 - Tripartite Alliance

3 Section 5 - Counts 4, 14 and 32 - Netherlands

4 Section 6 - Counts 4 and 15 - France

5 Section 7 - Counts 4, 17, 26 and 36 - USSR

6 Section 8 - Counts 7 to 13, 16, 29 to 31 and

7 34 - KOISO-YONAI Cabinet

8 Section 9 - Counts 1, 44, 48 to 51 and 53 to

9 55 - Education, Murder, POW

10 Section 10 - Concluding Argument.

11 Documents mentioned by Prosecution in KOISO

12 Summation.

13 Ex. 57, Tytton Report, 1 October 1932; KOISO
14 not named therein. T. 493, 502; Par LL-18.

15 Ex. 59, Report of League 24 February 1933,
16 KOISO not named therein. T. 402; Par. LL-19.

17 Ex. 114. Personnel Record of KOISO. T. 733;
18 Par. LL-28, LL-30, LL-31, LL-45.

19 Ex. 164, Record of various Societies. No
20 evidence to show illegal actions by such societies
21 was presented. T. 1,635; Par. LL-4, LL-26.

22 KOISO named among 28 members of Kokuhon-Sha
23 but original of exhibit shows he was not one of the
24 five directors. English copy of Ex. 164 lists 28
25 members with the 5 directors erroneously under

1 "directors". He only attended one meeting and joined
2 to get magazine. See Section 1 (4) page 20 KOISO
3 summation.

4 Ex. 179B, F. KIDO Diary, 5 July 1931.
5 T. 1924-8, 31,240-2; Par. LL-8, LL-23.

6 KIDO admits statement based on hearsay,
7 T. 31,242.

8 Ex. 192A, Chinese Summary of War Crimes
9 T. 2268-2270; Par. LL-28. This is a self serving
10 statement of charges based on hearsay attested by
11 the prosecutor and is no more evidence than the
12 Indictment as it was prepared for this trial. KOISO
13 not named therein.

14 Ex. 230. Letter from Chief of Staff Kwantung
15 Army (KOISO) to Vice Minister of War, YANAGAWA,
16 3 Nov. 1932. T. 2902; Par. 11-27, LL-28.

17 Outline for guiding Manchukuo alleged to have
18 been attached to letter of 3 November 1932 bears date
19 of 8 December 1932. Objected to as dates are impossible
20 to reconcile, T. 2912-3. Draft in English says
21 8 December 1923 but 8 December 1932 in Japanese text,
22 which is admitted correct at T. 2914-5. Arbitration
23 Board at T. 2916 shows dates to be still more im-
24 possible. Document has no probative value, is not
25 authentic, not connected with letter of 3 November 1932

1 which it was alleged contained the inclosure which
2 was not written until one month after letter had been
3 sent. Anyhow KOISO's only connection was as admin-
4 istrative assistant to Commander, to send and receive
5 such messages in the usual conduct of affairs.

6 Ex. 254. Chinese summary of military aggres-
7 sions. T. 3425; Pa. LL-40. No more evidence than
8 prosecution's Opening Statement, T. 3430, a mere
9 charge without proof. Based on hearsay. Self serving.
10 KOISO not named therein.

11 Ex. 276A. Japan Year Book. T. 3699; Par.
12 LL-40. Not an official document. No better evidence
13 than a newspaper. KOISO not mentioned therein.

14 Ex. 277. KOISO speech before Diet in 1944.
15 T. 3703; LL-47. As to the probative value of speech
16 see T. 3718-9. Premier was ordered to form cabinet
17 with YONAI. Statement of policies were as viewed
18 from the Imperial Rescript as to attitude, does not
19 state it as KOISO's will. The type of speech any
20 Prime Minister might, during a war on taking office
21 under similar circumstances, make.

22 Ex. 517-9. Telegrams of Ott and Ribbentrop.
23 Dated May 1940. T. 11698, 11699, 6156 to 6162; LL-35.
24 Notifying Japan of Germany's disinterest in Netherlands
25 Indies and discussing status quo there. KOISO not

named therein.

1 Ex. 520. Telegram Ott, Dated 19 June 1940.
2 T. 6162; LL-33. Relating to Japan's desire for a
3 free hand in Indo-China. Mentioning Foreign Ministry
4 and not Overseas Minister as set out in objection,
5 T. 6165. KOISO not named therein.

6 Ex. 523. Telegram Ott, dated 24 June 1940.
7 T. 6175, 11699; Par. LL-36. Par. LL-36 states MUTO
8 and KOISO were trying to obtain Germany's views con-
9 cerning the Netherlands Indies and Indo-China. However
10 compare the date of this with that of previous tele-
11 grams, Ex. 517 to 520, which show prosecution's pre-
12 sumption is not the case. KOISO and Interpreter
13 TOKUGAWA deny such statements were made by KOISO to
14 Ott.
15

16 Ex. 527-8. Minutes of 3 Ministers Conference
17 of July 1940. T. 6191, 6212; Par. LL-37. Discussion
18 of attitude toward Southern Regions by War, Navy and
19 Foreign Minister. Plans discussed were never adopted.
20 KOISO not named therein, KOISO retired July 22, 1940
21 from public life to become private citizen until 1942,
22 T. 733, Ex. 114.

23 Ex. 618A. Business Report of South Seas
24 Section in 1940. T. 6844; Par. LL-33. No certificate
25 to meet conditional acceptance, for certificate is to

1 Document of 1942 describing this report. Does not
2 certify as to accuracy and authenticity of report
3 itself. KOISO not named therein.

4 Ex. 619. KIDO Diary 19 June 1940. T. 6824;
5 Par. LL-33. Relates to Ex. 520 and contradicts prosecu-
6 tion presumption as to Ex. 523. That KOISO was asking
7 for information, which was already known in May, Ex. 517
8 to 520. KOISO not named therein.

9 Ex. 661. Decision of Supreme Council,
10 February 1945. T. 7165; Par. LL-49. Relates to
11 steps to be taken in Indo-China owing to development
12 of general situation in the Pacific. KOISO not named
13 therein.

14 Ex. 706. Russian table of Increase of Kwantung
15 Army. T. 7530; Par. LL-43. Series of Charts, etc.
16 prepared in 1946 for purpose of trial by Red Army
17 General Staff in Moscow. Not evidence any more than
18 an opening statement or Indictment is evidence.
19 KOISO not named therein.

20 Ex. 1007. Economic policy towards U.S., March 1940
21 T. 9634, Par. 11-38. Foreign Ministry documents
22 dealing with Japanese economic dependence on U.S.
23 Nothing illegal discussed in said document; KOISO
24 not named therein.

25 Ex. 1014. Excerpt Vol. II by Grew. 10 June
1940. T. 9669, 11685; Par. LL-37. Excerpt of press

1 release 17 April 1940. If taken in proper chronological
2 order these documents do not show any improper actions
3 or give rise to any doubtful presumptions. T. 9663-7.
4 KOISO not named therein.

5 Ex. 1294. KIDO Diary 27 June 1940. T. 11708;
6 Par. LL-37. Status quo as to Netherlands discussed
7 by ARITA, Foreign Minister. KOISO not named therein.

8 Ex. 1306. Decision of Liaison Conference,
9 25 June 1941. T. 11753; LL-49. KOISO was private
10 citizen, retired from 22 July 1940 until 1942. Had
11 no connection with drafting said plan. Prosecution
12 only presumed said plan was carried into effect. The
13 evidence shows clearly that authorities on the spot
14 and High Command took steps they did independently
15 of any plan and of the Government. KOISO not named
16 therein.

17 Ex. 1309A. Book by Dr. Von Mook, published
18 1944. T. 11776; Par. LL-36. Discusses Economic
19 Relations and statements of ARITA, Foreign Minister.
20 Has no probative value, immaterial and irrelevant as
21 pointed out at T. 11784 and 11776, and a book could
22 not be cross-examined on opinions and statements made
23 therein. KOISO mentioned on page 16 of Ex. 1309A,
24 T. 11796, as a probable delegate to Netherlands as not
25 being acceptable because of an alleged statement
criticising oppression of indigenous population of the

Indies. KOISO not named otherwise. ARITA, Foreign Minister in YONAI Cabinet and YONAI Premier have testified as witnesses here and neither have been indicted, therefore this evidence could not be of value against KOISO if the principals involved are not even charged, how could KOISO be held responsible merely as Overseas Minister for their actions. KOISO retired 22 July 1940 until 1942.

Ex. 1975. Report from Chief of Staff Korean Army 1942. T. 14520; Par. LL-42. To Vice Minister of War, KIMURA. Relating to British POW a matter completely in the hands of the military authorities over whom KOISO had no control, and KOISO as Governor General had no connection with POW administration as the evidence shows clearly. KOISO not named therein.

Ex. 2177A. OKAWA Trial proceedings. T. 15555, 15565, 15580-3; Par. LL-9, 12. Statements of OKAWA are not borne out by the evidence of either prosecution or defense witnesses as to KOISO at places cited above. No probative value to this self serving statement of OKAWA and it is impeached by other evidence refuting same as pointed out in Section 1, (2) on page 6 of KOISO's summation.

Ex. 2214. Captured German Document. T. 15815-8, 32199; Par. LL-31. Alleged Radio report of press

1 interview objected to T. 15812-5 and referred to Lan-
2 guage Section. Confusion between ARITA, Foreign
3 Minister and KOISO, Overseas Minister. ARITA ex-
4 amined on document at T. 30,009 to 30,014. On
5 T. 32,199 prosecution admits KOISO named by error for
6 ARITA and speech was made by ARITA. This is fully
7 discussed in Section 4 (4) page 64 of KOISO summation.

8 Ex. 2215. Minutes of Diet, March 1940.

9 T. 15819; Par. LL-36, 43. KOISO's statement T. 15825
10 is in reply to a request for his opinion by a Diet
11 Member who has made a speech. The reply discusses
12 purely economic and population problems and the pros-
13 ecution's presumption and inferences are erroneous as
14 no evidence supports their contention that this is a
15 significant statement which was acted upon.

16 Ex. 2252. KIDO Diary 17 May 1932. T. 16215;
17 Par. LL-26. KIDO merely states Vice Minister KOISO
18 seems to be in favour of a HIRANUMA Cabinet, source
19 of such information, reliability or significance not
20 shown. HIRANUMA Cabinet never came into power until 1939
21 seven years later.

22 Ex. 3375. KOISO Affidavit. T. 32205; Par. LL-6

23 Ex. 3377. Draft plan for Temporary System,
24 December 5, 1931. T. 32,338; Par LL-21. From Chief
25

1 of Staff of Kwantung Army MIYAKE to Vice Minister of
2 War SUGIYAMA. KOISO said he never saw documents before
3 and there was no indication it was ever adopted.

4 T. 32,335. Document immaterial and irrelevant as to
5 KOISO. KOISO discusses the document on redirect at
6 T. 32453-4. KOISO not named therein.

7 Ex. 3378A. Guidance of Military Government at
8 Manchukuo, August 1, 1934. T. 32,355; Par. LL-21,27,28.
9 Report by Military Government Advisor TADA to Commander
10 of Kwantung Army HISHIKARI. KOISO said he never saw
11 document T. 32,349. Report made after KOISO left his
12 post was for practical control of military administra-
13 tive matters. T. 32,350. Redirect examination at
14 T. 32,454-7 shows report does not encompass control
15 of civil administration. KOISO not named therein.

16 Ex. 3379-A. Letter from Chief of Staff of
17 Kwantung Army KOISO to Vice War Minister. T. 32,377;
18 Par. LL-27, 28. Forwarding Draft Recommendations
19 regarding Tariffs and Customs. This draft plan was
20 submitted by SUZUKI, Boku, to Commanding General of
21 Kwantung Army for adoption and forwarded to Central
22 Army Authorities and was not KOISO's opinion. T. 32459.

23 Ex. 3380-A. Telegram from Chief of Staff of
24 Kwantung Army to Vice War Minister, 24 January 1934.
25 T. 32,382; Par. LL-27, 28. Reply to an inquiry from

1 Central Army Headquarters and suggestions were not
2 complied with, T. 32385. Sent in KOISO's name as a
3 matter of routine. T. 32,461.

4 Ex. 3385-A. Organization of War Ministry
5 from 1920 to 1935. T. 32,484; Par. LL-7, 8. Shows
6 control of army budget during this period was under
7 the Chief of the Intendance Bureau and did not come
8 under the Military Affairs Bureau until several years
9 after KOISO left post. Ex. 74 (1942 revision),
10 T. 27,717. KOISO not named therein.

11 Ex. 3457. Five Ministers Conference, 31
12 October 1938. T. 37,345; Par. LL-41. Covers policies
13 to be followed in case China surrenders. KOISO was
14 a civilian at this time following retirement from
15 the Army 29 July 1938. KOISO not named therein. Had
16 nothing to do with forming such policies.

17 Ex. 3801-B. HARADA Memoir 8 May 1939.
18 T. 37,813; Par. LL-31. Deals with alleged conversa-
19 tion as to Tripartite Alliance. Document was corrected
20 by Language Board to show KOISO was quoting not his
21 opinion, but the army opinion or solution, and he was
22 asking for the opinion of the Lord Keeper of the Privy
23 Seal. KOISO opposed Tripartite Alliance in HIRANUMA
24 Cabinet and later in YONAI Cabinet which caused its
25 downfall. Corrections %. 38008-9. This is discussed in
Section 4 (6) of KOISO summation, Page 66.

1 If the Tribunal please, we will now present
2 the summation and argument on behalf of the accused
3 KOISO, Kuniaki.

4 I

5 Charges Against KOISO (LL-35) (T. 41,165)

6 We desire to meet the charges paragraph by
7 paragraph of the prosecution as set out in their summa-
8 tion pages LL-1 to 35, T. 41,164, and to guide the
9 Tribunal to the evidence of the defense which we sub-
10 mit meets each and every issue raised by the Indictment
11 against KOISO.

12 (1) Paragraph LL-1 set out the counts charg-
13 ing KOISO. We wish to submit that Count 44 and Count
14 53 are dropped by the prosecution under paragraph C-18
15 of their summation.

16 (2) We respectfully call the special atten-
17 tion of the Tribunal that a perusal of the Indictment
18 with respect to the accused KOISO reveals that KOISO
19 is not charged in the following counts:

20 Group one: Crimes against Peace: (Counts 19
21 to 25 inclusive; Counts 33 and 35). That is to say,
22 with respect to initiating a war ~~against~~ the Republic
23 of China, the United States of ~~America~~, the Common-
24 wealth of the Philippines, the British Commonwealth of
25 Nations, the Republic of France, the Kingdom of Thailand,

1 and the Union of the Soviet Socialist Republics, and
2 to waging a war against the Republic of France and
3 the Union of the Soviet Socialist Republics.

4 Group two: Murder; he is not charged in
5 certain counts: (Counts 37 to 43 inclusive; Counts
6 45 to 47 inclusive; and Count 52). That is to say with
7 respect to the common conspiracy, between the 1st June,
8 1940 and the 8th December, 1941, to unlawfully order,
9 cause and permit the armed forces of Japan to attack
10 the United States of America, the Commonwealth of the
11 Philippines, the United Kingdom of Great Britain and
12 North Ireland and all parts of the British Commonwealth
13 of Nations, the Kingdom of the Netherlands and the
14 Kingdom of Thailand and unlawfully kill and murder both
15 members of the armed forces of the said nations and
16 civilians: and with respect to the unlawful killing
17 and murdering by the armed forces of Japan at specified
18 dates or periods at Pearl Harbor, Kota Bahru, Kelantan,
19 Hong Kong, H.M.S. Petrol at Shanghai, the territory of
20 the Commonwealth of the Philippines, Davao, Nanking,
21 Canton, Hankow, in the region of Lake Khasan.

22 (3) We further submit that KOISO is not
23 amenable in any way to the evidence produced against
24 him under any of the remaining counts of the Indictment
25 and that the evidence does not establish guilt beyond

1 a reasonable doubt on any charge against KOISO, for
2 the preponderance of the evidence having probative
3 value clearly indicates he is not guilty of the charges
4 or allegations made by the prosecution.

5 SECTION I RELATED TO COUNT 1 - CONSPIRACY (D-22,24,
6 BB-4, CC-21, HH-1, 2, LL-3-16) (F-94, NN-4, 35)

7 (1) The prosecution, at transcript page 434,
8 state as follows:

9 "The position held by these accused is no bar
10 to their being considered as ordinary criminals and
11 felons if the evidence presented to this Tribunal proves
12 beyond a reasonable doubt, in such case they have been
13 parties to crimes for which they should be punished."

14 Out of the few thousand exhibits adduced by
15 the prosecution during the past two years, how many
16 of them reasonably hold this defendant to be guilty as
17 charged without an iota of doubt? There are none at
18 all as far as the defendant KOISO is concerned.

19 Further, the prosecution at transcript page
20 470, stated as follows:

21 "It may be that if all the facts were now
22 known to us, there are persons not now on trial whom
23 we might have charged in preference to some of the
24 accused. * * * The only question in the case of each
25 one of these accused is whether the case against him

as an individual is proved."

1 In this way the prosecution confesses not
2 only the difficulty it had of selecting the accused,
3 but further acknowledges it filed the Indictment with-
4 out a full and complete investigation. This explains
5 why many charges may be shown to be false or inconsis-
6 tent with the evidence. We find the following prosecu-
7 tion contention at transcript page 470-471:
8

9 "Although we charge that each of these ac-
10 cused was party to the progressive conspiracy alleged
11 in this Indictment and that they were acting in concert
12 to commit the other offences alleged, the evidence
13 will not show that they were a united band who were
14 in agreement with one another, as was the case among
15 the German conspirators. On the contrary, there appear
16 to have been sharp differences of opinion between them
17 and fierce rivalries, upon matters some of which are,
18 and some of which may not be relevant to these charges.
19 The evidence will show, we believe, that they were all
20 agreed in a determination to expand by aggressive war,
21 the power of Japan in every possible direction."
22

23 We submit that it is just as proper to con-
24 clude that although the accused might be united for
25 self-defense or for the purpose of safeguarding Japan
and her people, they were not in agreement with each

1 other with respect to planning a war or for committing
2 any illegal actions. Moreover, there is no concrete
3 evidence adduced to prove that the accused were in
4 agreement to expand the power of Japan in any possible
5 direction.

6 To insist that the accused KOISO is guilty,
7 in spite of the above fact, would make his trial a mere
8 formality.

9 Defendant KOISO has already established that
10 not only did he not plan to expand the power of Japan,
11 but that he also differed with other accused with respect
12 to the propriety of and to the method of executing many
13 national as well as political policies.

14 At transcript page 473, we find the prosecu-
15 tion interpretation of war and responsibility in the
16 following statement:

17 "The responsibility always rests upon human
18 agents, the individuals who have voluntarily sought
19 and achieved by one method or another the power. * * *
20 Since they have voluntarily achieved and assumed this
21 authority, they themselves, * * * , must be brought
22 to individual punishment for their acts."

23 We submit it was a practical impossibility
24 in Japan under the old Constitution for an individual
25 to voluntarily seek a responsible position and achieve

1 authority. Also, it has actually been made clear in
2 the case of KOISO that he was placed in his position
3 as Premier by order of his Emperor under entirely dif-
4 ferent circumstances than the foregoing.

5 In carrying out the duties of that office we
6 must also recall the important point made clear in the
7 German trial when Mr. Justice Jackson in the Nuernberg
8 case contended that the defendants were indicted not
9 because they conducted a war but because they led the
10 country into a war. (Harvard Law Review, July 1947,
11 page 883).

12 As to other positions held by KOISO there has
13 not been any evidence presented to show that he volun-
14 tarily sought and acquired or assumed any authority for
15 illegal purposes or with improper motives.

16 (2) With regard to the March Incident of
17 1931 (D-22, 24, BB-4, CC-21, HH-1, 2 and LL-9-16),
18 KOISO (T. 32,212) was not intimately acquainted with
19 OKAWA (T. 32,209) and was regarded within Army circles
20 as a moderate (para. 269 of Ex. 3340, T. 31,098). Al-
21 though Dr. OKAWA, Shumei and his followers, indignant
22 over the corruption in domestic politics and motivated
23 by dissatisfaction with the SHIDEHARA policies
24 (T. 15,578) at that time, schemed to carry out an
25 internal reform. If this constituted the beginning

1 of a conspiracy (HH-2), then KOISO was instrumental
2 in putting a stop to it before any attempt was made and
3 prevented the outbreak of an untoward incident (Ex. 157,
4 T. 1,630 was corrected T. 27,517). (KOISO, T. 32,287,
5 32,288, 32,292 and 32,294; UGAKI T. 1,608, 1,626,
6 1,627, 1,630 to 1,631; SHIMIZU T. 1,411, 1,418, 1,447;
7 TOKUGAWA T. 1,445); and HASHIMOTO made clear (T. 28,847)
8 that KOISO's only connection with said incident was
9 to put a stop to it and get back the dummy bombs;
10 HASHIMOTO's previous testimony (T. 28,820) was ambig-
11 uous until thus clarified (T. 28,847). Moreover,
12 KOISO said he was not one of the conspirators (CC-21)
13 but was one of the persons who helped suppress the
14 conspiracy through Marquis TOKUGAWA, who effected the
15 return to Army custody of the 300 firecrackers which
16 OKAWA had SHIMIZU, Konosuke, procure from HASHIMOTO,
17 a young officer in General Staff Headquarters. (KOISO
18 T. 32,212, 32,293 and 32,296; TOKUGAWA T. 1,446;
19 HASHIMOTO T. 28,807, 28,814, 28,847 and 28,820;
20 SHIMIZU T. 1,406 and 1,407). This incident being
21 a scheme for domestic reform devised by OKAWA only,
22 the assertion of Prosecutor Comyns Carr (T. 16,865)
23 that it was connected with the Manchurian Incident is
24 completely contrary to the facts, as made clear by the
25 testimony of HASHIMOTO, Kingoro (T. 28,820), who

1 admits having been connected with the March Incident
2 (T. 28,794); by the testimony of SHIMIZU, Konosuke,
3 who was OKAWA's co-conspirator (T. 1,410, 1,411 and
4 1,418) and the testimony of Marquis TOKUGAWA, Yoshi-
5 chika, who was on intimate terms with OKAWA (T. 1,446,
6 1,447 and 1,627); and the testimony of KOISO himself
7 (T. 32,209). In this connection we call attention to
8 the fact that the prosecution affidavit of Marquis
9 TOKUGAWA, Yoshichika was apparently not clear to him
10 due to his limited knowledge of English and the possible
11 English interpretation by the prosecution as to the
12 meaning of his affidavit or of the implications of
13 such English words as "abandon" (T. 27,517 and 28,820)
14 and "they" for example (T. 1,441-9). Since the affi-
15 davit was not taken originally in Japanese, but since
16 it had been originally written in English and trans-
17 lated to Japanese, but not read and explained to him
18 in Japanese (T. 1,443), it had the defect of failing
19 to express his thoughts clearly. You will recall that
20 counsel for KOISO tendered for identification exhibit
21 3384 after calling said Marquis TOKUGAWA in the defense
22 phase, since the document had been rejected by the
23 Tribunal for admission in evidence only on the ground
24 that it was repetitious of cross-examination, which
25 the majority may have felt cleared up the erroneous

impression created by the prosecution's affidavit.

1 It is clear from the record the affidavit as intro-
2 duced was under a false certificate due to carelessness
3 of the prosecution.

4 The prosecution's misunderstanding that KOISO
5 was originally a participant in OKAWA's plot arose
6 from an entry in KIDO's Diary of August 1931 (Ex.
7 179-F, T. 1927-28) and from OKAWA's interrogation
8 (Ex. 2177-A, T. 15,582, 15,583). The former is nothing
9 more than hearsay based upon distorted information
10 which KIDO heard from HARADO (T. 31,242) when he vis-
11 ited the latter on 7 August, several months after the
12 so-called incident. HARADA, moreover, had no connec-
13 tion whatever with the March Incident. That he was
14 a man who often passed on distorted rumors was brought
15 out clearly by direct examination of KIDO (T. 31,242).
16 As to OKAWA's interrogation his answer was very ambig-
17 uous and vague as to what he meant by the statement
18 "KOISO gradually came to be involved" (Ex. 2177-A),
19 it was clear that KOISO was not one of those who were
20 unlawfully plotting a "coup de etat" as was shown by
21 the testimony of HASHIMOTO, SHIMIZU, TOKUGAWA, and
22 KOISO to which reference has above been made. The
23 only involvement OKAWA could have meant was the trans-
24 mittal by KOISO of his request to UGAKI for an
25

1 interview and discussion of the plan as there had been
2 no connection between KOISO and OKAWA prior to that
3 (T. 32,209). Moreover, with regard to the statement
4 in the said OKAWA interrogation with reference to
5 KOISO and others, it was OKAWA's scheme, as has been
6 explained, to make it appear as if high officers in
7 the Army were behind the scene as leaders in the plan
8 and backing it. By such means OKAWA sought to give it
9 weight and thereby to lure and capture the minds and
10 hearts of other young officers and adherents as has
11 been proved by HASHIMOTO's testimony (T. 28,807,
12 28,814) to the effect that OKAWA's statement was not
13 true and without basis in fact (T. 28,847). Unfortu-
14 nately OKAWA could not be called as a witness because
15 of his mental condition and such being the case the
16 Tribunal, pursuant to its past ruling as to OKAWA's
17 sanity and on the basis of the evidence in relation to
18 its period of duration should disregard such evidence
19 offered by the prosecution from such source.
20

21 It has been claimed not only in the Indictment
22 but also even among some Japanese themselves that a
23 criminal militaristic clique was in existence. The
24 prosecution also use terms "Japan", "the conspirators",
25 "brigands", "outlaws" and "criminal" without showing
any connection or continuity of action of said unnamed

persons with any accused. As to the word "clique" it was originally defined as a small and exclusive set or coterie of persons or a combination composed of those interested in the same field of work. Rumor mongers also dealt in terms such as clan clique, militaristic clique, financial clique, academic clique and others. Such terms were labels often used to ridicule, belittle or besmear an individual by associating said individual with scandal, unlawful activities or conduct caused by others in the same field of work who have cast suspicion upon the members of their vocation through certain actions. When the interest in the Army gradually was aroused people started to use the term "Gumbatsu" (militaristic clique). This term was a favorite expression of politicians in political fights for casting suspicion on opponents with a military background and was used to ridicule and belittle Army programs and reform. Many purposely abused military and naval officers with whom they disagreed by sarcastically stating they belong to a militaristic clique.

Military officers' activities created interest and jealousy. At the time of the great earthquake in 1923, Japanese Government officials' administrative measures were inadequate. Army officials contributed

greatly in relieving suffering and disorder. Many Japanese praised the efficiency of Army administration and criticized their political leaders' inefficiency, causing jealous comments. When lives and properties of Japanese residents in Manchuria and China were in danger due to bandits, Communists and others imbued with ultranationalistic ideas, while awaiting the result of diplomatic negotiations, the Army came to be of assistance in many ways. These actions won trust and the impression was created and expressed by some that the Army was more effective than any other government organ; this created suspicion and jealousy and caused name-calling.

It was charged by some that financial, political and governmental cliques were utterly corrupt and had produced a chaotic state of affairs. Therefore, when soldiers and young officers worried over the state of national affairs took indiscreet steps and engaged in political activities, they were labeled as a "militaristic clique" thereby damaging the prestige of other officers in the Army.

On the other hand, many such other officers made use of the spare moments out of their military duties to study diligently, day and night, law, economics and administrative matters, as a consequence of

1 which their efforts and high standard of knowledge
2 won admiration of many individuals. But politicians
3 and other opponents in political, financial and gov-
4 ernmental cliques would often class these men as be-
5 longing to "the military clique" thus besmearing
6 them with actions of the black sheep of their profes-
7 sion.

8 There were some, as is natural to all coun-
9 tries, who were ideological radicals and who possessed
10 special purposes, and for their subversive behind-the-
11 scene activities the term "militaristic clique" could
12 be used to their advantage if it could be superimposed
13 in the limelight. The majority of the young men re-
14 cruited and placed under the direct leadership of
15 young officers of the Army were sons of poor and unfor-
16 tunate farmers of the country, who received deep sym-
17 pathy of sincere young officers as to their home condi-
18 tions. Knowing this, these young men were aroused to
19 advocate internal reform and renovation of the nation
20 by civilian radicals. Such was the case of the so-
21 called March and October 1931 Incidents, which were
22 fortunately prevented before they were carried out, and
23 of the unfortunate May 1932 and February 1936 Incidents,
24 which occurred. These gave unscrupulous politicians
25 more dirt for their label "military clique" and such

1 scandals were used to discredit the military ser-
2 vices in attempts to weaken the confidence of the
3 people in the government in power. Able statesmen
4 in the WAKATSUKI Cabinet understood that these attacks
5 on the government were led by Communists, ideological
6 radicals and irresponsible elements and not by the
7 older officers in the military services, who were
8 quietly at work putting a stop to the political activ-
9 ities of military personnel and exposing and punishing
10 those responsible for the above incidents.

11 THE PRESIDENT: Very little of this is war-
12 ranted by the evidence, Captain Brooks. But proceed.

13 MR. BROOKS: These inferences, your Honor,
14 are drawn from the KIDO Diary and HARADA Memoirs and
15 are general summation evidence. I haven't cited it,
16 but it is already in evidence. And this argument
17 that is following here is evidence which has already
18 been cited previously and it hasn't been repeated. If
19 the first references are read you will find this is sub-
20 stantiated by the citations I have already given.
21
22
23
24
25

1 Military policy was enforced which strictly
2 prohibited officers and soldiers in active service
3 from taking part in politics; such policies were
4 based on the Army's fundamental duties, not being con-
5 sistent with such activity.

6 One of the accused stated from hearsay, based
7 on such rumors, that the March Incident was the
8 beginning of interference in politics by a militaristic
9 clique. Such statements, not based on fact, were made
10 by politicians in government circles, and grew and
11 flourished as a result oftentimes of blind faith in
12 their own observations to each other and in those sup-
13 plied in a superficial way by other ill-advised dealers
14 in hearsay, called political information brokers.
15 Furthermore, advantages were often taken by unscrupulous
16 individuals to slander others through supplying false
17 rumors to people who peddled rumors, and by this
18 means worked their schemes to hide their own incom-
19 petence or lack of faithfulness to their duties.

20
21 Such being the case, that there were a
22 number of Japanese who were nearsighted and mistaken
23 in their views, it is natural in a way for the prosecu-
24 tion who are not too versed in the political affairs
25 of Japan to swallow the bait and use a term such as
"criminal militaristic clique" as a label for condemning

1 men of military training. The term "criminal" or such
2 a label as "military clique" should not be combined
3 or used against the accused, we submit, until the
4 propriety of the term is decided by the fact being
5 established as to whether or not he is guilty of
6 indiscretion and that a common conspiracy to commit
7 illegal actions he led the nation into an aggressive
8 war.

9 As has become clear from the evidence the so-
10 called March Incident was a plan on the part of Dr.
11 OKAWA, Shumei to carry out domestic reform if he
12 could persuade General UGAKI of the Minseito party
13 group to act as a leader of the opposing Seiyukai
14 party group, a plan which ended in failure. OKAWA,
15 as a means of mobilizing his followers to carry out
16 his plan, may have represented himself as having
17 intimate connections with such men as General UGAKI
18 and KOISO and left an impression that he had powerful
19 supporters behind the plan as a means of magnifying
20 his own importance in order to dazzle young and naive
21 followers; however none of such followers' testimony
22 supports such theory that KOISO was one of their
23 number. Moreover, OKAWA created doubt as to his own
24 integrity and credibility by advertising himself as
25 having connections with the so-called October Incident

when, as a fact, it is clear from the evidence, that
1 all civilians including OKAWA were excluded from it
2 by the ones involved as they testified in this case.

3 . OKAWA's ideas and statements are as conflicting
4 and incoherent as his actions were eccentric. A meet-
5 ing of minds between OKAWA, the radical reformer,
6 and KOISO, the prudent and careful, as shown by the
7 evidence, was impossible. It was this prudent and
8 careful nature of KOISO's that prompted him to order
9 Colonel NAGATA to study the plan brought by OKAWA so
10 that in reporting the true purport of OKAWA's plan
11 to his superior, War Minister UGAKI, he would be fully
12 prepared to make accurate and critical replies to any
13 inquiries from the Minister.
14

15 From the time he asked OKAWA for his explan-
16 ation, at this interview KOISO advised abandonment
17 of the March Incident plan. That he was instrumental
18 in recovering the firecrackers which had been given
19 to OKAWA and his followers and endeavored to protect
20 the prestige of the Army from public criticism has
21 been brought out clearly before the Tribunal by the
22 testimony of the witness TOKUGAWA, HASIMOTO and
23 SHIMIZU.

24 If by chance the firecrackers had been left
25 in the hands of OKAWA and his group, some other

1 untoward incident might have been planned in the
2 future. The March Incident was terminated as a result
3 of KOISO's efforts and the firecrackers, although
4 they had no destructive or dangerous power, were
5 restored to their proper place. The diligence of
6 KOISO in this matter should have been praised. How-
7 ever, it seems certain rumors arose because a section
8 of the people who did not know the truth misunderstood
9 KOISO's actions and it took the evidence of those who
10 actually participated in the incident to clear up said
11 rumors and hearsay gossip.

12 It has been stated in the testimony of a
13 prosecution witness that the aim of the March Incident
14 was to bring about the emergence of a cabinet of the
15 Seiyukai party which would effect domestic reforms
16 under the proposed leadership of General UGAKI whom
17 the Chief of Counsel for the prosecution has given
18 the stamp of friend of peace because he was a member
19 of the Minseito party group. To say that the March
20 Incident became the motive force behind a scheme for
21 an armed occupation of Manchuria or that it was a
22 cause which strengthened the Army's voice in politics
23 is a farfetched version fabricated by those who would
24 try to give some semblance of rationality to their
25 allegations about this incident or to cause suspicion

1 on others to cloud their own activities or divert
2 attention from themselves. An examination of the
3 relation between the March Incident and the Manchurian
4 Incident will reveal how unfounded the charges are
5 that there was an unlawful connection between the two.
6 It is clear from KOISO's testimony that when OKAWA
7 visited him to explain the reason for his plan not
8 one word was said about the Manchurian question.
9 Furthermore, both TOKUGAWA and SHIMIZU, who were on
10 intimate terms with OKAWA, testified that the March
11 Incident had nothing to do with the Manchurian question.
12 If we examine the various documents relating to OKAWA,
13 the first time he ever alleged that the motive of the
14 March Incident was because of the Manchurian question
15 was when he was examined in connection with the May
16 15th Incident which occurred in 1932 several months
17 after the outbreak of the Manchurian Incident (OKAWA's
18 interrogation, Ex. 2177-A). There were none among
19 those that testified, who stated they were informed
20 about any such motive for the March Incident plan at
21 the time or who ever testified they heard from OKAWA
22 that the plan was related to the Manchurian question.
23 We submit from this fact that OKAWA tried to create
24 an impression and utilized the Manchurian Incident
25 and the rumors afloat thereabout, to bolster the

1 importance and the value of his past activities to
2 try and escape punishment under the law.

3 With regard to the observation that the
4 March Incident was a cause intended to strengthen
5 the Army's voice in politics, meaning we assume the
6 alleged criminal militaristic clique, it is clear
7 that this is a deliberately distorted version of the
8 circumstances, as seen from the evidence as we have
9 reviewed it above. The March Incident had nothing to
10 do even to the lightest degree with the Manchurian
11 question nor with the strengthening of the political
12 influence of the Army. It was a scheme, which the
13 evidence shows, originated in the mind of Dr. OKAWA
14 out of his personal desire to rescue Japan from the
15 throes of corruption in domestic politics.

16 Even though we assumed it to be a means of
17 expressing sincere motives, the scheme of action
18 which this plan harbored was shown to be reckless
19 and irrational. Fortunately by KOISO's efforts, those
20 who were involved were made to abandon the plan and
21 the execution thereof; unknowing young officers who
22 perhaps ignorant of the real nature of the plan, were
23 being lured toward improper participation by OKAWA,
24 were saved from disgrace and the honor and prestige
25 of the Army were protected. Because KOISO's action

1 was not publicized various suspicion cropped up,
2 supplying the so-called information peddlers with
3 rumors to spread.

4 KOISO's recommendation for premier by senior
5 statesmen was after careful discussion as to his
6 character and background and confirms other evidence
7 that he had no connection with those who were accused
8 and later tried for improper conduct.

S
p
r
a
t
t
&
L
u
d
a~~Paragraph LL-2 of the prosecution summation~~

1 deals mostly with the activities of OKAWA and others.
2 There is no evidence that KOISO was interested in OKAWA
3 or his plans or assisted him in any way and the evi-
4 dence shows that KOISO was not aligned with OKAWA.
5 The testimony of those involved in the March Incident
6 shows KOISO took steps in line with his administrative
7 duty as a personnel officer in the War Ministry to
8 investigate the activities of OKAWA and the young
9 officers in the Army General Staff which explains his
10 study of the consistency of the plan, and his actions
11 were deliberate once he gained knowledge as to its
12 contents to present its various aspects to the War
13 Minister with his criticism of its reckless nature.
14 Thereafter he put a stop to OKAWA and the young offi-
15 cers' activity in accordance with orders from and in
16 line with the policy of the War Ministry that active
17 army officers and soldiers should not participate in
18 political movements. KOISO's reports to the War
19 Minister on the activities of these young officers and
20 OKAWA finally led in a later incident to disciplinary
21 action against the young officers, and OKAWA, later,
22 was sentenced and served five years' imprisonment as
23 a result of his continuation of action against public
24 order. Though KOISO's steps were deliberate and he
25

took a serious view of the question as affecting army prestige, he persisted in his efforts to remove all danger from the dummy bombs being later used improperly (T. 28,814). Therefore this must have special significance in establishing that there was no conspiracy on the part of KOISO with OKAWA.

(3) The prosecution contend that the defendant KOISO was connected with the so-called 1931 October Incident. That this was not so has been proved by the testimony of KOISO himself (T. 32,213 and 32,214) and the testimony of HASHIMOTO, Kingoro, who was directly involved in the incident (T. 28,815).

(4) KOISO's activities prior to the Manchurian Incident (LL3, 4, 26, F94). The prosecution in their summation contend that KOISO was interested in the Kokuhonsha Society, but KOISO stated he only attended one meeting and that he was never a director or officer of the society (T. 32,273). He said he paid the membership fee which was necessary in order to subscribe to the magazine (T. 32,276), "The Kokuhon," published by the society, which had many articles by leading statesmen on matters of current interest (T. 32,275).

If exhibit 164 in the Japanese is examined carefully, it will show that he was mentioned only as

involved in the incident (T. 28,815).

(4) KOISO's activities prior to the Manchurian

one of the members and was not a director. All societies listed put the official title over the column in which is listed the persons named and where there are more than one column of officers or directors the additional columns are shown by an indication "u" which means "ditto" being placed over such columns. In exhibit 164 there are only 5 directors designated and KOISO's name appears in a different column from that of the directors and is listed with the remaining 28 members whose names appear in several columns, none of which are designated by any title of director or other title than that at the head of these columns of "members." KOISO testified that while he was a regimental commander stationed at Tsu, Japan, he wanted to read this magazine called the "Kokuhon" (T.32,276) and that was the only reason why he became a member of that society and paid a membership fee. As to the nature of the "Kokuhonsha" he said "nobody explained to me the real character or nature of the 'Kokuhonsha' but from what I have read in the magazine the 'Kokuhon,' published by this organization, my understanding was that the purpose of this organization was to make the nature and spirit of Japan known better to its members" (T. 32,275). KOISO denied that it was his understanding that the organization hoped to accomplish its aims by

taking political measures (T. 32,276).

1 We submit that regardless of the purpose of
2 this society before or after KOISO joined it, that
3 he only attended one meeting and took no part in its
4 activity at any time other than that, so no responsibi-
5 lity should rest on him from merely reading its
6 magazine.
7

8 (5) The evidence relating to the Seiyukai
9 party (D24, Ex. 2177-A, T. 15,580) does not indicate
10 KOISO ever was a member. Also UGAKI and the HAMAGUCHI
11 Cabinet were members of the Minseito party which opposed
12 the Seiyukai party and its positive policy, so it is
13 weird to state UGAKI was to become president of this
14 opposing party and this was a hallucination of OKAWA
15 that UGAKI of an opposing party would take or be
16 trusted to act as president. KOISO, when questioned,
17 denied any knowledge or membership in the organization.
18 Paragraph LL-5 sums up KOISO as being more than a
19 military man under orders of his superiors. We believe
20 the evidence refutes this as well as the conclusion of
21 the prosecution that KOISO was a supporter of persons
22 and movements having as their design forceful measures
23 for the expansion of Japan by war if necessary. Fur-
24 thermore, if KOISO had been connected with these inci-
25 dents he would have been summoned before a trial

1 either as a witness or an accused but he was not sum-
2 moned, which further indicates OKAWA's statements to
3 be false.

4 (6) To a question from the prosecutor whether
5 Director of the Military Affairs Bureau KOISO had not
6 severely criticized him, MINAMI replied "That is not
7 in my recollection at all." (T. 19,827) Thus the
8 hearsay evidence written in the memoirs of HARADA
9 (Ex. 3756-A, T. 37,570) have no probative value and
10 are refuted. This document was introduced to create
11 the impression that KOISO and the Director of the Inten-
12 dance Bureau were opposed to the army reorganization
13 question, but if the paragraph immediately following
14 said excerpt is read it shows KOISO only opposed the
15 proposal to postpone the time for commencement of the
16 reorganization plan.

17 (7) The foregoing proof and explanations we
18 submit show defendant KOISO is not amenable in any way
19 to the evidence produced against him under count 1 of
20 the Indictment.

21 (8) With regard to NN-4.

22 In 1931 KOISO was, as Director of the Military
23 Affairs Bureau, one of the War Minister's administrative
24 assistants. In that position he offered suggestions
25 and advice to War Minister MINAMI as to the question

1 of how to carry forward completely and smoothly the
2 policies of the WAKATSUKI Cabinet based upon the
3 principles of the SHIDEHARA diplomacy. That he did
4 not participate in any common conspiracy of aggression
5 against Manchuria is clear from KOISO's own testimony
6 in which he said, "In view of the situation at home
7 and abroad -- I do not remember the exact date -- I
8 presented my view to the War Minister and the Vice-
9 Minister on how to avoid war, by adhering to the policy
10 of patience and forbearance in the face of any develop-
11 ments of the situation in China, especially in the
12 Manchurian area." (KOISO, T. 32,207.) Furthermore,
13 MINAMI also testified, "I had a thorough understanding
14 of its (Minseito party cabinet) policies." (MINAMI,
15 Tr. 19,777.)

16 (9) With regard to NN-35.

17 The prosecution's evidence does not show any
18 conspiracy between MINAMI and KOISO to secure Japan's
19 domination anywhere.

20 Since becoming Director of the Military Affairs
21 Bureau in August 1930, KOISO did no more than to carry
22 out faithfully the duties of his office in accordance
23 with superior orders as administrative advisory organ
24 to his superior, the War Minister, as has been des-
25 cribed. In that position he suppressed the March

1 Incident before it occurred (HASHIMOTO, T. 28,847); he
2 advised avoidance of any conflict with China by exer-
3 cising patience and forbearance under all circumstances
4 (KOISO, T. 32,207); and when the Manchurian Incident
5 broke out he acted in accordance with the policy of
6 non-expansion as laid down by the government (KOISO,
7 T. 32,207, Ex. 3421-A, T. 32,827). These facts are
8 clear from the evidence. Moreover, with regard to the
9 dispatch to Manchuria of Major General TATEKAWA whom
10 the prosecution view as an advocate of expansion, the
11 evidence clearly shows that KOISO had no connection
12 therewith. (MINAMI, T. 19,821; KAWABE, T. 19,433;
13 ISEHARA, T. 22,248; and KOISO, T. 32,309.)

14 (10) With regard to the prosecution summation,
15 para. F-90:

16 The prosecution contend that "The witness OGATA,
17 President of the Information Board in 1944 under Premier
18 KOISO, testified that while freedom of the press was
19 always limited in Japan, censorship became particularly
20 noticeable immediately preceding the Manchurian Inci-
21 dent, when newspapers were required to submit copy to
22 the Home Ministry for censorship." However, this
23 witness later testified (T. 1150-1152) that censorship
24 had existed for a long time prior to the Manchurian
25 Incident and refutes the previous statement about

1 censorship becoming particularly noticeable immediately
2 preceding the incident.

3 (11) Paragraph LL6 shows KOISO as an infantry
4 officer become a major general in December 1926; there-
5 fore he could not be one of the members of any young
6 officers' group or one who would expect advancement
7 in rank because of activities in any group.

8 From August 1930 to February 1932 he held the
9 administrative position of Chief of the Military
10 Affairs Bureau of the War Ministry in charge of the
11 sections set out in paragraph LL7. It should be
12 pointed out that at this period the budget control was
13 not included and did not become a function of the
14 Military Affairs Bureau until years later.

15 Paragraph LL8 is misleading. TATEKAWA was
16 not linked to KOISO as a plotter of the March Incident
17 as alleged. It was made clear by a number of witnesses
18 and documents as well as by HASHIMOTO on cross-examination
19 that KOISO put a stop to the activities of the young
20 officers of the General Staff. Furthermore, if KOISO
21 was conspiring with others to cause trouble in Mukden,
22 why would KOISO broach the need for action by the
23 central authorities to stop impulsive movements by
24 the Kwantung Army and why would KOISO advise and assist
25 MINAMI, the War Minister, in sending letters and

1 telegrams to the Kwantung Army to carry out the
2 SHIDEHARA policy of the cabinet of non-expansion and
3 localization of the trouble and why did they confer
4 with the General Staff to make the army comply with
5 government policy and their instructive advice?

6 The prosecution by discussing the alleged opi-
7 nions of TATEKAWA and OKAWA try again to smear KOISO
8 or to put a square peg in a round hole by getting the
9 Tribunal to make KOISO responsible for the opinions
10 of someone just because he came briefly in contact with
11 them in carrying out his duties.

12 (12) In paragraph LL-9 we find the March
13 Incident discussed as though it had actually taken place.
14 When we examine the participation of KOISO we find it
15 was as an administrative officer of the War Ministry
16 investigating the activity of military personnel of
17 the Army General Staff and prohibiting these young
18 officers from violating the policy against participation
19 of officers or soldiers on active duty in movements of
20 political nature.

21 We find further that the OKAWA request for use
22 of government troops was studied for consistency but
23 that when it was made clear they were not to be used
24 or desired merely to parade and march in a peaceful
25 demonstration the plan was declared to be reckless

and KOISO was ordered to put a stop to the activities
1 of these people which he did, thus ending the incident.

2 The prosecution tried to lead this court to
3 believe that the Diet Building was to be blown up with
4 "bombs" and made much of the 300 "bombs" to be used to
5 seize control of the government. The development that
6 there was a mistake in translation and interpretation
7 of the word "firecracker" or "fireworks" for "bomb"
8 threw a different light on the wild claims of the
9 prosecution. Whether this mass demonstration called
10 the March Incident was planned to attract the attention
11 of the government to the need for certain changes or
12 not it never was carried out, so what significance does
13 it have? What happened to OKAWA later? Would you
14 expect to find one of the alleged conspirators, OKAWA,
15 serving five years in prison during such a period of
16 time of alleged conspiracy? Would you expect to find
17 KOISO and MINAMI, two of the accused, bringing about
18 the sentencing of other accused with whom they are
19 charged with conspiring? This does not make the right
20 pattern for finding KOISO guilty of such charges as
21 alleged.

22
23
24 (13) Paragraph LL-10 is easily understood if
25 we consider that troops were being asked for to participate in a political demonstration, Naturally one

1 would examine to find out what was desired in order
2 to consider what basis there could be for either approv-
3 ing or rejecting the request. Troops are often used
4 in parades, etc., not only on festive occasions but
5 for political demonstrations, and when KOISO found out
6 the nature of the OKAWA plan, he classed it as reck-
7 less and being an improper request for the use of
8 troops, it was refused, and on finding out that some
9 young General Staff officers were participating, KOISO
10 took proper steps to curb and restrain such prohibited
11 conduct as being detrimental to army prestige and
12 policy by calling it to the attention of their proper
13 superior officers and carrying out orders to put a
14 stop to the activities of such officers and civilians.

15 Paragraph LL-11 states the cancelled March
16 Incident plan was motivated by a desire to solve the
17 Manchurian problem and accomplish Japan's overseas
18 development by setting up a new political power. What
19 Manchurian problem does the prosecution mean? The
20 Manchurian Incident had not happened as this was March
21 1931. True there had been over 300 incidents of
22 serious consequence involving the loss of life and
23 property of many Japanese and Korean residents in Man-
24 churia and China proper but the evidence shows these
25 were being handled through diplomatic negotiations of

1 the Foreign Office. Furthermore, the evidence of the
2 defense shows that at this time there were many poli-
3 tical parties in Japan dissatisfied with internal con-
4 ditions, corrupt political practices, etc., so we feel
5 their conclusion here is not well based and that this
6 incident had no significance in relation to the charges
7 against the accused. KOISO should know as he inves-
8 tigated it and put a stop to its plans and if it had
9 such significance as the prosecution wish to infer it
10 would be to KOISO's credit to point out that as KOISO
11 was active in putting an end thereto he must be found
12 not guilty of being one of the alleged conspirators.

13 As to paragraph LL-12 we believe mistranslations
14 account for these erroneous impressions as they are not
15 sustained by later actions of the accused nor by the
16 preponderance of the evidence which shows KOISO was not
17 involved in said plan.

18 Paragraph LL-13 is easily understood when we
19 see KOISO's position in the War Ministry was connected
20 with personnel matters and it was his duty to protect
21 army prestige by acting as he did in advising those
22 concerned in the Army General Staff and preventing
23 embarrassment to the War Ministry as a section of the
24 government's cabinet.
25

Furthermore, HASHIMOTO admitted that he was

1 the one that furnished the 300 so-called "bombs" held
2 by SHIMIZU and OKAWA, and that KOISO had no connection
3 with it. The prosecution tried to prove KOISO con-
4 nected with this as a result of mistaken translations
5 such as the evidence of Marquis TAKUGAWA whose English
6 affidavit was introduced under a false certificate from
7 the interpreter as is clear from the record and which
8 when explained to him in Japanese does not express him
9 correctly at all as the English affidavit was not cor-
10 rect as shown by other evidence as well as by the cross-
11 examination of TOKUGAWA himself.

12 KOISO had no military authority to seize such
13 alleged bombs and besides it was more discreet to
14 handle such matters quietly to protect army prestige
15 since involved were military as well as civilian
16 personnel who had taken no action in carrying out
17 such political demonstration.

18 Any reason the deceased MUTO may have had for
19 failing to act to recover the alleged bombs may or may
20 not be material but if he was one of the accused in
21 the dock guilty of the prosecution's charges his actions
22 in failing to prevent such a plot and require return
23 of the fireworks might be significant of his being a
24 party approving thereof. Therefore, the action of the
25 accused KOISO ending such a plot as alleged by the

1 prosecution does not follow a pattern indicative of
2 guilt or improper motives but was in line with his
3 official duty to protect army prestige by preventing
4 such political connivance by military men.
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25

Paragraph LL-14 relies on rumors and OKAWA's statements to fix KOISO's participation in the March Incident. We do not know whether OKAWA's statements were based on his desires or his dreams becoming so mixed between hallucination and fact that he made such statements or whether he was trying to create an impression that Government officials were involved so the Law Enforcement authorities might be persuaded they should not go any deeper into his activities. However we know all such statements and rumors have been declared false by the preponderance of the evidence and that HASHIMOTO and others clear KOISO of any illegal participation in said incidents. Furthermore, OKAWA was sentenced to 5 years' imprisonment and there is no record against KOISO in connection with any of such incidents. If OKAWA's statements were made they were surely investigated by the police and many people were punished as a result but KOISO's actions were not questioned. Furthermore, KOISO and MINAMI were the ones active in bringing about such investigations and punishment of illegal activities of such political groups. HASHIMOTO never said KOISO planned any incident. He named those who participated in it and included legal as well as illegal participation as was pointed out in his cross-examination.

Paragraph LL-15 does not arrive at a logical conclusion for the preponderance of the evidence shows beyond any reasonable doubt that KOISO was not a conspirator in the plots and KOISO testified the plan was reckless, and NAGATA, after studying it, apparently could find nothing consistent with legal political movements such as troops might be used in to parade or participate in a proper political rally; therefore, when it was presented to UGAKI who was the one to make any decision that was called for, it was turned down as KOISO had predicted it would be when he was first approached by OKAWA to request an interview with UGAKI about it. Therefore, KOISO's condemnation of the plan then and now has been shown to be consistent with his actions in carrying out his orders to put a stop to these activities on the part of such young officers.

Paragraph LL-16 shows that the prosecution lack understanding of the duties of KOISO in the War Ministry for his attitude was in line with the action he took to see that the plan was not put into execution and he was interested enough in insuring this as well as in protecting army prestige to persist until the so-called "bombs" were removed from the hands of those who might use them at a later date which might cause

1 reflection on the thoroughness of his carrying out
2 his orders to see that the demonstrators did not carry
3 out their plans.

4 We state again that the plan as outlined by
5 the evidence does not show any connection with the
6 Manchurian Incident. Since the Manchurian Incident
7 happened on September 18, 1931, how could this have
8 been "the first step toward solving the Manchurian
9 Incident" as this plan was terminated due to the
10 efforts of KOISO and others in March 1931, six months
11 before the Manchurian Incident arose and the next
12 political incident by OKAWA and others did not appear
13 until some time after the Manchurian Incident, and it
14 also was nipped in the bud as a result of the vigi-
15 lance of KOISO and others in the War Ministry.

16 The prosecution has merely been trying to
17 prove their theory by stating this happened, and these
18 things happened; so they ask you to assume they were
19 connected activities of a group planning an aggressive
20 war against the prosecuting nations. The evidence we
21 believe shows this theory is not even reasonable when
22 we examine the facts in evidence refuting such conten-
23 tions.
24
25

SECTION 2 -- RELATING TO COUNTS 2, 6, 18,
27 -- MANCHURIA (LL-17 to 26).

(1) In his opening statement on the Manchurian Incident Prosecutor Darsey (T. 1678 and 1690) in specifying the defendants alleged to have been connected with this incident, omitted KOISO's name from the list and made no reference to him.

The prosecutors have contended, without regard to dates, that the Director of the Military Affairs Bureau was responsible for the army's budget and that KOISO as an occupant of that post was responsible for the dispatch of troops to Manchuria (TANAKA, T. 15859 - 15860), and Comyns-Carr, T. 16865). During that period of time that KOISO was Director of the Military Affairs Bureau, "matters concerning the supervision of the general budget" were not one of the functions of his bureau, but as stipulated in the organizational regulation of the War Ministry, such was the responsibility of the Director of the Intendence Bureau, together with other matters relating to the army's budget. KOISO testified on this point (Ex. 3375, T. 32222; Ex. 3385, T. 32485) and the matter has been fully clarified by the excerpt from the organizational regulations of the War Ministry (Ex. 3385, T. 32484) and the reply of the witness

1 NISHIURA, Susumu, when examined by counsel for KOISO
2 (T. 27717). The prosecution's contentions are there-
3 fore wrong, because such responsibility did not become
4 one of the duties of said office of the Military Affairs
5 Bureau until several years after the period in ques-
6 tion, when laws were revised and the change in
7 responsibility made.

8 The prosecution, in their summation (para.
9 LL-8) states: "Matters concerning General Staff
10 headquarters were under KOISO's jurisdiction as well
11 as matters regarding normal army organization, includ-
12 ing peace and wartime organizations." This is mislead-
13 ing for a Chief of a Bureau in the Ministry of War can-
14 not interfere with matters under the jurisdiction of
15 the Army General Staff Office. (Article 11, Organiza-
16 tion of War Ministry (Ex. 3385-A). When Article 11
17 is read in its proper context it means he conducts
18 liaison on matters relating to negotiation between the
19 War Ministry and the General Staff Headquarters.

21 The Military Affairs Bureau of the War
22 Ministry is not in a position to control matters
23 relating to the Army General Staff Headquarters.
24 (Horwitz, T. 667) (Nolan, T. 585). Even the War
25 Minister who controls and is responsible for the
actions of the Chief of Military Affairs Bureau has

no control over the General Staff.

1 The dispatch of the Chief of the First
2 Division TATEKAWA to Manchuria was not based upon
3 recommendation of KOISO. (MINAMI, T. 19825; KAWABE,
4 T. 19433; ISHIHARA, T. 22218; KOISO, T. 32309). The
5 prosecution in their summation (LL-17d) is wrong in
6 stating that KOISO expected the outbreak of the
7 Manchurian Incident or that he requested the dispatch
8 of General TATEKAWA. This was pure speculation and
9 conclusion on the part of the prosecution. KOISO
10 himself testified and he was supported by the other
11 witnesses that there was no such fact at all.

12 The investigation and activities to be in-
13 vestigated concerned operational matters which were
14 exclusively under the jurisdiction of the General
15 Headquarters. The War Ministry would not be consulted
16 where a member of the General Staff was to be sent out
17 on an inspection trip on behalf of its own business.
18 This explains why some witnesses were perplexed by
19 questions on such a matter and replied, "This is not
20 possible" (ISHIHARA, T. 22218); (KAWABE, T. 19433) and
21 "KOISO had no authority to do so." (T. 19821 and
22 32207).

23 (2) The document on the study of the organi-
24 zation of the military police in Manchuria sent by
25

1 MP Commander MINO to the War Minister dated 25 July
2 1931 (Ex. 3376, T. 32302) relates also to a period
3 when KOISO was Director of the Military Affairs Bureau,
4 a matter not within his authority to decide. The docu-
5 ment does not bear KOISO's signature or his seal, in-
6 dicating that he had read it, and he himself testified
7 that he had never examined it (KOISO 32444). Further-
8 more, the defense offered supplementary evidence
9 (Ex. 3383, T. 32448-51) and has shown that the contents
10 of the document in question was only the personal
11 desire of the Kenpei commander to increase the strength
12 of the military police over a period of fourteen years
13 to a total of approximately 5000, and had no prospect
14 of realization. (KOISO, T. 32453).

15 (3) The prosecution in their summation
16 (para. LL-21, para. LL-22) discuss the document
17 "Plans for the Temporary System Now Being Carried Out
18 in the Policy Toward Manchuria and Mongolia." However
19 it does not bear any signature or seal indicating that
20 KOISO ever read it and he did not recall it. (T.32335)
21 (T. 32337) TT. 32453).

22 The prosecution's allegation is erroneous
23 that the advisory body mentioned under Item II (Ex.
24 3377-A) is the same as the advisory department to which
25 TADA belonged. TADA was advisor of the Department of

1 Military Administration of Manchoukuo (War Ministry)
2 and his function was entirely different from that
3 mentioned in this rough draft. TADA's report had
4 nothing to do with KOISO who by that time had left
5 the service (T. 32349). We submit it was nothing more
6 than a document pigeonholed by a subsection of the
7 Military Affairs Bureau and that KOISO, as Director
8 of said Bureau cannot be said to have had any relation
9 to it. Nor does the evidence show such a plan was
10 ever approved or put into effect (T. 32334). This
11 is further discussed in (11) below.

12 (4) The prosecution introduced into evidence
13 a newspaper story showing that KOISO attended a
14 reception given on 30 June 1931 by War Minister MINAMI
15 for officials of the South Manchurian Railway Company
16 (Ex. 2202, T. 15752; T. 18846). That this affair was
17 not a conference to discuss Manchurian-Mongolian
18 problems but a purely social function has been proved
19 by the testimony of defendants KOISO (T. 32215, 32216),
20 and MINAMI (T. 19810, 19811) and of the witness SOGO,
21 Shinji (Ex. 3415, T. 32808). In relation to the two
22 conferences reported, see para. NN-5 and page 42 of
23 DD 3071 (Manchurian Summation, Sec. F, Part II, 2).
24

25 (In the prosecution summation (D-20) they
contend that the War Minister invited these officials

1 of the South Manchurian Railway to dinner and dis-
2 cussed with them Manchurian-Mongolian problems and
3 that KOISO was at this party; however, this was a
4 mere social dinner party and no Manchurian-Mongolian
5 political problems were discussed. How can the
6 prosecution contend, after we study the men named as
7 being present at this party, that the War Ministry
8 favored military action in Manchuria? (T. 15753,
9 T. 31705, T. 32809)).

10 The evidence has established the fact that
11 War Minister MINAMI and other officials of the War
12 Ministry did everything in their power following the
13 said party to prevent unfortunate incidents in Man-
14 churia. (KOISO, T. 32207; TOYAMA, Ex. 3416, T. 32811;
15 Ex. 3422-F, G and H, T. 32840; Ex. 3425, T. 32842).

16 (5) Certain documents were offered by the
17 prosecution in anticipation that they may have signifi-
18 cance (T. 15807) but they apparently are not relied
19 upon since they are not mentioned nor appear in their
20 summation. Among these documents we will discuss
21 only those bearing the name of KOISO, Kuniaki.
22 (Ex. 2210, T. 15809; Ex. 2211, T. 15810).

23 It was a customary procedure for documents
24 coming and going between the War Minister and Army
25 Commanders to be handled in the name of the Vice-

Minister, and Chief of Staff of said Army Commanders,
1 respectively, as to matters of administration of
2 relative unimportance. This has been clearly shown
3 by the testimony of the witness SHIBAYAMA (T. 31805);
4 KAWAHARA (Ex. 3364, T. 31755, 31756) and MIKI (Ex.
5 3357, T. 31717, 31718). Such documents are not
6 evidence of KOISO's having had any more than an ad-
7 ministrative and supervisory function in relation
8 thereto. The use of such special funds, with which
9 these documents are related, has already been clari-
10 fied in KOISO's testimony (Ex. 3375, T. 32223). The
11 statement of the Tribunal's President (T. 15806) is
12 a clear answer to all of said related documents that
13 they have no significance as such expenses of an army
14 are natural.
15

16 (6) With regard to the Dairen Maritime Customs
17 wire sent by the Chief of Staff of the Kwantung Army to
18 Vice-Minister of War KOISO, dated 4 June 1932 (Ex. 227,
19 T. 2837) (Para. AA-20):
20

21 This document addressed to KOISO, Kuniaki,
22 as Vice-Minister of War, as stated in the foregoing
23 paragraph (5) was in accordance with the customary
24 administrative procedure. Personal responsibility
25 ended once he placed it before the War Minister ARAKI
for proper action. (T. 32223). ARAKI did not take any

1 action thereof, it seems, because relations with
2 third powers were especially delicate at the time and
3 the question of customs was still under study by the
4 government and during KOISO's time did not materialize
5 (KOISO, Ex. 3375, T. 32223) and the evidence does not
6 show what happened as to the following government's
7 action thereon.

8 (7) With regard to the special funds sent
9 to KOISO as Chief of Staff of the Kwantung Army by
10 the War Ministry (Ex. 2213, T. 15811):

11 The Honorable President of the Tribunal
12 has noted (T. 15806) it is only natural that a
13 necessary amount of special funds are required where
14 armed forces operate and it is taken for granted that
15 such funds were not received personally. The funds
16 were transferred as a matter of fact to the Commander-
17 in-Chief and the Chief of Staff KOISO no more than
18 took receipt of them as a matter of administrative
19 formality, as was explained. (T. 31756, 31757; KOISO,
20 T. 32462). As to the nature of the special fund
21 (T. 15805) it was a fund of which no report was re-
22 quired. Its accounting was under the charge of the
23 Senior Adjutant and Intendance Officer under the
24 Deputy Chief of Staff, who gave directions according
25 to the orders of the Commander-in-Chief. The Chief

1 of Staff, KOISO, merely gave supervision as testified
2 to by him (T. 32224) and by the witness HIYOSHI,
3 Takehiko, who was the Intendance OFFICER at the time.
4 (Ex. 3386, T. 32491). The special fund was used as
5 shown by the testimony of HIYOSHI, Takehiko (T.32490)
6 and of KOISO (T. 32224), to cover expenses of the
7 official residence of the Commander-in-Chief and
8 the various departments of the Kwantung Army Head-
9 quarters, and for allocation to the various divisions,
10 independent brigades and other units of the Kwantung
11 Army. The testimony of KOISO (T. 32225) shows there
12 was a rigid arrangement of accounting of the fund
13 so that no personal profit could be derived, and this
14 insured its use only for officially authorized purposes
15 as directed by the Commander-in-Chief.
16
17
18
19
20
21
22
23
24
25

1 (8) In November, 1932, KOISO as Chief of Staff
2 of the Kwantung Army sent a document to Vice-Minister of
3 War YANAGAWA entitled "Outline for the Guidance of Man-
4 chukuo." (Ex. 230, T. 2903.) (AA-12) (para. AA-24 and
5 D-70.) As explained in detail by KOISO (T. 32,230) this
6 document was a reply by way of giving the views of the
7 Commander-in-Chief of the Kwantung Army on suggested pro-
8 cedure summing up from authorities on the spot material
9 in reply to a work draft forwarded by the Second Division
10 of the Army General Staff Headquarters in the original,
11 and was in accordance with customary procedure sent in
12 the name of the Chief of Staff to the Vice-Minister of
13 War. (IWAKURA, T. 32,507-8.) It did not represent
14 KOISO's opinions, as admitted by prosecution at par.
15 D-70 (T. 39,158) nor was he in any position of command
16 which authorized him, as set forth in par. LL-27, to
17 decide on such a matter. (KAWAHARA, Ex. 3364, T. 31,756;
18 Regulations Kwantung Army, Ex. 2415, T. 19,557.) More-
19 over, this was only a reference draft and was not approved
20 or put into practice as is clear from the prosecution's
21 own evidence (Ex. 233, T. 2925) that the Japanese
22 Government's views were separately adopted nine months
23 later.
24
25

(9) The "Draft of Outline of General Measures
Regarding Customs Duties in Manchuria," sent by KOISO to

the Vice-Minister of War in December, 1932, (para.

1 LL-27) (Ex. 3379-A, T. 32,377) also falls under the same
2 category as the previous document which we have referred
3 to. Responsibility for the contents belonged to General
4 MUTO, Nobuyoshi, the then Commander-in-Chief (KAWAHARA,
5 T. 31,756, 31,757) and KOISO was only administratively
6 connected with the document by virtue of his position as
7 Chief of Staff (KOISO, T. 32,459.)
8

9 (10) The document "Views Concerning the Organic
10 Law of the Government of Manchukuo" (para. LL-27 (c)) sent
11 by KOISO, Chief of Staff of the Kwantung Army, to the
12 Vice-Minister of War in January, 1934 (Ex. 3380, T. 32,384
13 is also, like those just referred to in (8) and (9) above
14 not the personal view of KOISO, but the views of the
15 Commander-in-Chief sent in the name of his Chief of Staff
16 to the Vice-Minister of War (KOISO, T. 32,230.) Attention
17 is especially called to KOISO's testimony that his
18 personal views on the question differed from those of the
19 Commander-in-Chief (T. 32,384 and 32,385.) KOISO stated
20 on cross-examination on this document it was the reply
21 of the Commander-in-Chief on the spot to a request for
22 views from the Army authorities at home (32,265) and it
23 is wrong to conclude that KOISO had any responsibility
24 therefor.
25

(11) The document "Report on the Guidance of the

1 Manchukuo Army Administration" (LL-27) (LL-21) sent by
2 Major General TADA to General HISHIKARI, Commander-in-
3 Chief of the Kwantung Army, dated 4 August 1934 (Ex.
4 3378-A, T. 32,357) was prepared long after KOISO left
5 the Kwantung Army (Ex. 114). It does not bear KOISO's
6 signature or any seal indicating that he had read it,
7 nor has the document relevance to him. Moreover, the
8 contents relate to the "gunsei" (which is also the term
9 for "military administration") of Manchukuo. What this
10 term describes is not military administration of Manchu-
11 kuo by Japan, but of policies for guidance of the depart-
12 ment of the Army of Manchukuo, which was the name "gunsei
13 for its War Ministry. This document is a report by Major
14 General TADA who was an advisor of this department showing
15 his policies for assisting and advising it. He was making
16 apparently special effort to gain recognition of the
17 results achieved by the advisory department and has ex-
18 pressed quite at length his wishes concerning that depart-
19 ment for the future, which accounts for considerable
20 exaggeration in the report. Although this document con-
21 tains a historial account of the development of the
22 department of the Manchukuo Army, nothing can be found
23 placing responsibility in any way on KOISO.

25 (12) With regard to the conferment of decorations (Ex. 114, T. 734 and 16,865) KOISO was conferred

1 of grade below Class B, the Order of the Golden Kite, and
2 the Grand Cordon of the Rising Sun on 29 April 1934, as
3 were 300,000 other Government officials and Army and Navy
4 officers who occupied official position in the Japanese
5 Government during the time of the Manchurian Incident.
6 These decorations were not rewards for committing unlaw-
7 ful acts but a customary courtesy to officials. The
8 decoration, the Order of the Rising Sun was of a grade
9 equivalent to a previous one and the Order of the Golden
10 Kite was one grade higher than a previous one, both of
11 which former decorations had been awarded many years ago
12 in a similar courtesy gesture.

13 (13) We submit the prosecution (para. NN-4)
14 summation does not take into account that during KOISO's
15 period in office during the time of the Manchurian Inci-
16 dent that he merely carried out the duties of his office
17 solely pursuant to the orders of his superiors. His
18 capacity was that of an administrative assistant and he
19 was performing purely administrative business functions.
20 He devoted earnest efforts to the settlement of all the
21 incidents occurring during said period:
22

23 (a) The explosion incident on the railroad
24 tracks at Liutiaokou near Mukden on 18 September 1931
25 was an entirely unexpected incident which KOISO and others
did not foresee, as was clearly shown by the testimony of

1 the witness KATAKURA who was a staff officer of the Kwan-
2 tung Army at the time (T. 18,889, 18,891); the testimony
3 of MINAMI, Jiro, the then War Minister (T. 19,799-800);
4 the testimony of the witness KAWABE, Torashiro, then a
5 member of the Army General Staff Headquarters (T. 19,410)
6 and the testimony of SHIDEHARA, Kijuro, the then Foreign
7 Minister (T. 1388.) KOISO held at the time the post of
8 Director of the Military Affairs Bureau of the War
9 Ministry. At the time of the outbreak he was asleep at
10 home and learned of it for the first time by a report on
11 the telephone. On the following morning he hastened to
12 his office to handle such business of settling the inci-
13 dent as was delegated to him (KOISO, T. 32,215.)

14 (b) At the time of the outbreak of the Mukden
15 Incident (Liutiaokou Incident) the Japanese Government
16 received a report of investigation from the Kwantung Army
17 to the effect that the outbreak occurred because of shots
18 being fired by Chinese troops following an explosion at
19 the railway in consequence of which actions in self-
20 defense were taken (MINAMI, T. 19,886, 19,883; TANAKA,
21 T. 2,088; SHIDEHARA, T. 33,550.) The Government on its
22 part publicly declared from the outset and the accused
23 firmly believed that Japan's actions were in self-defense
24 and were not unlawful.
25

KOISO in carrying out his administrative duties

1 acted on the natural assumption that all such measures
2 of self-defense would be limited and controlled in
3 accordance with the policy of the Japanese Government
4 (KOISO, Ex. 3375, T. 32,216.) Moreover, those who were
5 connected with the WAKATSUKI Cabinet and the War Ministry
6 concentrated their efforts toward a quick settlement of
7 the incident even though they felt and believed that the
8 action taken by the Army had been proper and self-defens-
9 ive. (MINAMI, T. 19,787; KAWABE, T. 19,412; KATAKURA,
10 T. 18,815; WAKATSUKI, T. 1554-5; TANAKA, T. 1338, 1340,
11 2086 and 2088.)

12 Furthermore, the Lytton Report states in detail
13 of the plans of the Central Government of China to recover
14 its national rights, the customs and manners of the
15 Chinese people, the actions of the bandits and provincial
16 warlords, the boycott of foreign rights and interests in
17 China, especially cases of infringement of Japanese right
18 and interests in Manchuria and the more than 300 pending
19 issues between Japan and China. The report recognizes
20 the repeated occurrences of perplexing incidents founded
21 upon the anti-Japanese attitude and actions of Chinese.
22 Moreover, the report states as the views of the Commission
23 of Inquiry regarding the incident of 18 September 1931
24 that the Japanese officers on the spot may well have been
25 of the belief and conviction that they were acting in

1 self-defense (Lytton Report, Ex. 57, T. 71.) From this
2 it is abundantly clear that the actions taken by the
3 Army were an exercise of what they naturally believed to
4 be self-defense and therefore did not constitute an
5 intentional or premeditated unlawful act.

6 (c) Upon being informed of the outbreak of the
7 incident a cabinet meeting was immediately called to dis-
8 cuss measures to be taken and reached unanimous agreement
9 to do everything in its power to settle it before it ex-
10 panded. Cabinet Ministers sent out telegraphic instruc-
11 tions to their subordinate organs and agencies in an
12 endeavor to settle the incident. This fact has been
13 clearly established by the testimony (OKADA, T. 1386;
14 WAKATSUKI, T. 1571; MINAMI, T. 19,781; KATAKURA, T.
15 18,897, 18,901, 18,905 and 18,907; KAWABE, T. 19,413,
16 SHIDEHARA, T. 1388) and it has been shown that from the
17 very outset of the incident the officials of the Japanese
18 Government who were KOISO's superiors had no intention
19 whatsoever of instigating aggression in Manchuria.

20 (d) At the time of the outbreak of the Manchuria
21 Incident, KOISO was a Director of the Military Affairs
22 Bureau of the War Ministry and later became Vice-Minister
23 of War (Ex. 114.) Matters pertaining to the dispatch of
24 troops to and military operations in Manchuria were out-
25 side the competence of his office as clearly shown by the

1 testimony of WAKATSUKI, Reijiro (T. 1588); of UGAKI,
2 Kazushige (T. 1620); and of MINAMI, Jiro (T. 19,851,
3 19,853 and 19,858.)

4 (e) The military actions (para. LL-28) with
5 which KOISO was related while Chief of Staff of the
6 Kwantung Army were actions taken for the maintenance of
7 law and order within Manchukuo based upon the Japan-
8 Manchukuo protocol (Ex. 440) and were believed to be
9 legitimate acts based upon the right of suppression of
10 banditry which right Japan had been able to reserve at
11 the council of the League of Nations as well as having
12 been authorized under treaty between what was believed by
13 KOISO and others to be two independent nations.
14
15
16
17
18
19
20
21
22
23
24
25

1 There were in Manchuria at that time many
2 bandits with strongholds in various districts who,
3 combining with deserters and remnants from private
4 Chinese armies, committed banditry on a wide scale,
5 disrupting law and order and creating conditions
6 which did not permit of any neglect. The report of
7 the Lytton Commission describes in detail that these
8 bandits and soldiers who turned to banditry had
9 constituted a cancer in the maintenance of law and
10 order in Manchuria even long before the Manchurian
11 Incident (Ex. 57, T. 19). The testimony of KOISO
12 (Ex. 3375, T. 32,225) and of ARAKI (T. 28,316) was
13 that the actions of the Japanese forces were not
14 aggressive in design, but were actions for the maintenance
15 of law and order recognized by treaty.

17 (f) From 2 August 1930 to 29 February 1932
18 KOISO was Director of the Military Affairs Bureau of
19 the War Ministry; from 29 February 1932 to 8 August
20 1932, Vice-Minister of War, and from August 1932 to
21 5 March 1934, Chief of Staff of the Kwantung Army
22 (ex. 114). All these positions were those of an
23 administrative assistant and were not offices which
24 could directly and independently make any decisions.
25 (Ex. 73, Article 18 of the General Rules Concerning
the Organization of the Ministries, T. 504; SHIBAYAMA,

Ex. 3368, T. 31,804). From the cited proofs it is
1 clear that the office of the Director of the Military
2 Affairs Bureau was one of an administrative assistant
3 directly responsible to the Minister of War.

4 (g) The position of Vice-Minister was similar
5 to that of Bureau Director in that he was an advisory
6 assistant (Ex. 73, Article 14, T. 504). All documents
7 and drafts were made on the basis of and in accordance
8 with the instructions of the War Minister upon con-
9 firmation of the Minister's instruction and they
10 became official only after receiving the final approval
11 of the Minister. (SAWAMOTO, Ex. 3351, T. 31,672;
12 KAWAHARA, T. 31,754). Furthermore, there are three
13 forms of official documents relating to the Army.
14 Namely, those sent out with the name of the War
15 Minister, of the Vice-Minister and of the Senior
16 Adjutant, but all of these are sent out on the
17 responsibility of the War Minister, as testified by
18 the witness KAWAHARA, Naoichi (T. 31,753) and the
19 witness SHIBAYAMA, Kenshiro (Ex. 3368, T. 31,803).
20

21 * (h) Again, the position of Chief of Staff
22 of the Kwantung Army which KOISO occupied from 8
23 August 1932 to 5 March 1934 (Ex. 114, T. 733) was that
24 of an administrative assistant to the Commander-in-Chief.
25 (Regulations Kwantung Army, Ex. 2415, T. 19,557).

It was the customary procedure to use

1 the name of the Chief of Staff in the sending and
2 receiving of notifications and telegrams as shown
3 by the witness KAWAHARA, Naoichi. (Ex. 3364, T. 31,756-
4 57). Moreover, the Chief of Staff of the Kwantung
5 Army being a staff officer of the Commander-in-Chief
6 as such he had no power of command of troops. In
7 the absence of the Commander-in-Chief the Senior
8 Commander of troops was the officer with power of
9 command and handled operational matters and acts as
10 commanding officer and not the Chief of Staff, who is
11 an administrative officer. (KOISO, T. 32,230; Regulation
12 Kwantung Army, Ex. 2415, T. 19,557). Hence not even
13 once did KOISO, while serving in Manchuria as Chief of
14 Staff, commend troops or engage in military action.
15 In other words, he did not have direct responsibility
16 for the operational actions of the Army.

17
18 (i) The Prosecution, in their summation
19 (Par. LL-30) refers to the relation between the
20 control of opium in Manchuria and KOISO and contends
21 as if the special service department of the Kwantung
22 Army was controlling opium. However, MINAMI, in his
23 redirect examination clearly denied that this special
24 service department ever dealt with opium. (T. 20,074).
25 KOISO also testified that "the Kwantung Army had nothing

to do with the opium problem." (T. 32,374). KOISO
1 h absolutely no connection with the control of
2 opium in Manchuria. In this matter there has been
3 a confusion of the special service organ with the
4 special service department. Control towards progressive
5 prohibition and its results are discussed in PART III,
6 Section 3 of the Manchurian General Summation.

7 (j) In connection with the Manchurian
8 Incident, since KOISO was always only an administrative
9 assistant carrying out the duties of his office in
10 accordance with and pursuant to the orders from the
11 War Minister or the Commander-in-Chief of the Kwantung
12 Army, as the case might be, he did not attend, as he
13 has testified (paragraph 29, KOISO, T. 32,256; T. 32,257)
14 any conferences or meetings such as might make him liable
15 to any charge of the crime of conspiracy.

17 (14) We submit KOISO is not amenable in
18 any way to the evidence produced against him under
19 Counts 2,6,18 or 27 of the Indictment.

20 (15) KOISO's belief and actions relying on
21 the Sovereignty and independence of Manchukuo in her
22 relations with Japan are consistent with the Duff case.

23 In the case of Duff Development Company,
24 Limited v. Government of Kelantan and Another in
25 which the House of Lords affirmed an order staying

proceedings against the Government of Kelantan on
1 the ground that the Sultan of Kelantan was an independent
2 sovereign ruler and the state was an independent
3 sovereign state over which the court had no jurisdiction,
4 Viscount Finlay made the following remarks regarding
5 the relation between sovereignty and independence:

6 "The question put was as to the status of
7 the ruler of Kelantan. It is obvious that for sovereignty
8 there must be a certain amount of independence, but
9 it is not in the least necessary that for sovereignty
10 there should be complete independence. It is quite
11 consistent with sovereignty that the sovereign may
12 in certain respects be dependent upon another Power;
13 the control, for instance, of foreign affairs may be
14 completely in the hands of a protecting Power, and there
15 may be agreements or treaties which limit the powers
16 of the sovereign even in internal affairs without
17 entailing a loss of the position of a sovereign Power."

18 (1924) A.C. 797, 814. See also the concurring
19 opinions of Viscount Cave, Lord Dunedin, and Lord
20 Carson, *ibid.* 808-809, 820, 830.)

21 (Cited in Hackworth's Digest of International
22 Law, Vol. I. page 51).
23

24 THE PRESIDENT: We will recess for fifteen
25 minutes.

1 (Whereupon, at 1045, a recess was
2 taken until 1100, after which the proceedings
3 were resumed as follows:)
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25

K
a
p
p
l
e
a
u
&
Y
e
l
d
e
n

1 MARSHAL OF THE COURT: The International
2 Military Tribunal for the Far East is now resumed.

3 THE PRESIDENT: Captain Brooks.

4 MR. BROOKS: SECTION 3 -- RELATING TO
5 COUNTS 3, 6, 28 and 48 -- CHINA.

6 1. On August 6, 1946, Prosecutor Morrow in
7 the opening statement of the China phase stated as
8 follows (T. 3246):

9 "Because of their conduct in official positions,
10 in successive Japanese governments which carried out
11 military aggression in the territory of China, as
12 well as their personal activity, participation or
13 acquiescence therein, all the defendants are respon-
14 sible for the war crimes, etc."

15 We submit that the general rule is that the
16 acts of a subordinate officer or soldier, done in
17 good faith and without malice in compliance with his
18 supposed duty, or of superior orders, are justifiable,
19 unless such acts are manifestly beyond the scope of
20 his authority, and such that a man of ordinary sense
21 and understanding would know to be illegal. KOISO
22 was opposed to interference in China's domestic
23 affairs and stood for Japanese-Chinese good will and
24 amity.
25

(The Kwannon Hall (Hall of the Goddess of

1 Mercy) was erected by him on the south mound in the
2 compound of the Temple Zojoji in Shiba Park, Tokyo,
3 and dedicated to prayer for the souls of Chinese and
4 Japanese, soldiers and civilians, who died in hostili-
5 ties between the two countries.)

6 We will present the official positions and
7 personal activity during this period of the accused
8 KOISO and show that he was not responsible for such
9 alleged war crimes.

10 On March 5, 1934, KOISO was transferred from
11 the post of Chief of Staff of the Kwantung Army to
12 that of Commander of the Fifth Division in Hiroshima,
13 Japan. Later he was transferred to Seoul, Korea,
14 when appointed Commander of the Korean Army on Decem-
15 ber 2, 1935, and he held this post until for the
16 purpose of retirement from active service he was
17 assigned to the General Staff on July 15, 1938
18 (Ex. 114, T. 734). His assignment to the General
19 Staff was the customary provisional appointment
20 designed to give a nominal post pending completion
21 of procedure for transfer to the reserve list. There
22 were no duties attached to this appointment to the
23 General Staff. This is further confirmed by the fact
24 that he was discharged from active service and trans-
25 ferred to the reserve list two weeks thereafter.

(22. 114).

1 KOISO, as we have seen, had no connection
2 whatsoever with the China Incident, during the years
3 1934 to 1938, the period of his service in Japan and
4 Korea as a soldier on the active list.

5 (1) The prosecution against KOISO presented
6 an administrative policy speech which was dated more
7 than seven years after the outbreak of the China
8 Incident when KOISO was Prime Minister in September
9 1944, the last stage of the Pacific War. (Ex. 277,
10 T. 3703). This evidence itself contains nothing
11 which might connect him with criminal acts relating
12 to the China Incident. An objection was made by
13 KOISO's defense counsel for said reason at the time
14 the document was presented in evidence. (T. 3718,
15 3719). Moreover, the President of the Tribunal him-
16 self remarked, "It looks like a speech that any Prime
17 Minister might make during a war." (T. 3719).

18
19 Following retirement from the Army after a
20 period of retirement, KOISO was appointed as Overseas
21 Affairs Minister (from April 7 to August 30, 1939),
22 then he retired again until his appointment as Over-
23 seas Affairs Minister (from January 16 to July 22,
24 1940) in the YONAI Cabinet. However, he did not,
25 while holding such position, participate in matters

1 pertaining to the Supreme Command or in matters
2 discussed by the Five Ministers' Conferences. Even
3 during his tenure of office as Prime Minister (from
4 July 22, 1944, to April 7, 1945) KOISO had never
5 participated in matters pertaining to the Supreme
6 Command, but, on the contrary, aspired for a speedy
7 restoration of peace between China and Japan and
8 made strenuous efforts towards that end by inviting
9 Miao Ping, who had secret contact with the Chungking
10 Government, to come to Japan in order to pave the
11 way for the conclusion of peace with China. (KOISO,
12 T. 32253; TANAKA, T. 32540, T. 32257, T. 32268; KIDO,
13 T. 31114, 31115).

14 (2) It was clearly established by the testi-
15 mony of UGAKI, Kazushige (T. 1620), by SHIDEHARA,
16 Kijuro (T. 1389, 1392), by an excerpt from the KIDO
17 Diary (Ex. 179f-1, T. 1940), by the testimony of
18 MINAMI, Jiro (T. 19853, 19851) and the testimony of
19 TOJO, Hideki (T. 36819, 36839) that the Supreme
20 Command had exclusive jurisdiction over military
21 operations of Japan, and that the Cabinet had no
22 authority to interfere with such military operations.

23
24 2. Although KOISO is charged in Count 48
25 with alleged murders committed around 18 June 1944 in
the City of Changsha, we respectfully submit that

KOISO had nothing to do with this incident as he was
1 in Korea holding the post of Governor of Korea when
2 the alleged incident occurred and the prosecution
3 produced no evidence of any connection of KOISO there-
4 with.

5 We submit that murder is the unlawful killing
6 of a human being with malice aforethought. In order
7 to find one guilty we submit that the prosecution
8 must prove that the accused killed a certain person
9 named or described by certain means as alleged (this
10 involves proof that the person alleged to have been
11 killed is dead; that he died in consequence of an
12 injury received by him; that such injury was the
13 result of the act of the accused; and that the death
14 took place within a year or reasonable time of such
15 act); and that such killing was with malice aforethought.
16

17 (3) We submit KOISO is not amenable in any
18 way to the evidence produced against him under Counts
19 3, 6, 28 or 48 of the Indictment.

20 (4) (In relation to LL-51):

21 The prosecution in the preamble to the In-
22 dictment stated that parliamentary institutions in
23 Japan were used as implements for widespread aggres-
24 sion. We submit it failed to establish this fact and
25 it should be considered that this presumption is

disproved and not justified. It is further refuted
1 by the past career of many of the defendants and
2 witnesses who have testified before this Tribunal
3 of the rise and fall of 15 Cabinets, and of the differ-
4 ing reasons therefor, any member could block the
5 opposition in the Cabinet to give a new group of
6 statesmen an opportunity to confer and try and
7 arrive at a solution to the many complex problems of
8 modern government.
9

10 The parliamentary system in Japan was
11 established in 1890 and ended for all time the so-
12 called administration by clan cliques or arbitrary
13 administration by the bureaucrats of clan cliques,
14 to be replaced by party government. The party govern-
15 ments which came into being at great pains may have
16 often disregarded some national interests and welfare
17 and pursued selfish interests and policies in a fight
18 over political power. To make the situation worse,
19 some members of parties indulged in their own personal
20 profits at the expense of the system, as the result
21 of which, they came to lose a considerable degree of
22 confidence of many Japanese officials and civilians.
23 This situation reached its worst stage in the beginning
24 of the Showa Era (1926), which led groups of civilians
25 and young military officers to become thoroughly

aroused. Under such circumstances political party
1 members gradually became prudent and a party backed
2 by masses of society such as farmers, etc., sprang up
3 in addition to the old parties, thus the interpellation
4 in the Diet could break the long-established
5 custom to compromise and could adopt a tendency to
6 deal with matters upon their merit. The day when the
7 decision of the Diet could be swayed entirely by the
8 Government's own guiding policies was thus completely
9 wiped out. During the tenure of the KOISO Cabinet,
10 they adopted as one of its political programs the
11 encouragement of freedom of speech, as the result of
12 which, speech in the Diet became very active. However,
13 there was a custom not only among the members of the
14 Diet but also among the Japanese in general, due to
15 time-honored tradition and the influence of Chinese
16 thoughts that although brothers quarrel with each
17 other within the nation, they are united to put up a
18 fight when their decision has been made or their
19 existence endangered by foreign nations. Therefore,
20 Japanese people fought most furiously until a matter
21 under discussion was decided, but once a decision was
22 reached, even those who opposed it would often respect
23 the idea by submerging minority differences.
24
25

This custom was reflected in the Diet and,

1 though the proceedings were conducted according to
2 the provisions of the Constitution, once national
3 policy was approved by a majority of votes, it was
4 the established custom to support and uphold it
5 whether it was in time of peace or war. Although the
6 intrinsic nature of the Diet differed considerably
7 according to the period as stated above, it was a
8 fact that members were without exception always
9 cooperative, irrespective of the period, with
10 established national policy. It is our submission
11 that the culmination of democratic government is to
12 join and become one with a decision once it becomes
13 the majority decision. The prosecution theory seems
14 to disfavor this policy, and they have approved, or
15 in some instances seemed to praise the maintenance
16 of a non-cooperative attitude towards matters
17 decided by the majority, over opposition which once
18 out-voted, abided by the majority view, to make the
19 support unanimous, a custom of long standing in the
20 Parliamentary institutions of Japan.

21
22 The prosecution criticism that such parlia-
23 mentary institutions as existed in Japan were used as
24 implements of widespread aggression by unanimous con-
25 sent of the members is an observation which saw only
the attitude of the Diet that cooperated with the

1 national policy which had been established by majority
2 decision.

3 In cases, however, where the opposition was
4 firmly established in its mind, that the majority
5 decision could not be followed further with any hope
6 of readjustment or of obtaining unanimous support, we
7 see a cabinet fall and a new group of statesmen take
8 over the problem for consideration. Does the record
9 of all 15 of the cabinets, and the lack of a consistent
10 group following in each cabinet, have no special
11 significance, especially the record of KOISO, who
12 was not in a cabinet position. When any one of the
13 alleged illegal or hostile actions were commenced,
14 and had no part in their inception in any way.

15 SECTION 4 -- RELATING TO COUNT 5 --
16 TRIPARTITE ALLIANCE.

17 (1) In the opening statement made on
18 September 19, 1946 (T. 5900), Prosecutor Tavenner
19 described acts committed by certain defendants in
20 connection with the conclusion of the military alliance
21 among Japan, Germany and Italy, but did not refer to
22 any act of KOISO in connection therewith. The first
23 Tripartite Pact was discussed, met opposition and was
24 abandoned. The next Tripartite Pact was concluded
25 27 September 1940 (T. 36194) by the KONOYE Cabinet.

1 The prosecutor next directed attention to personnel
2 records and to the positions held by the accused dur-
3 ing this period. We likewise direct your attention
4 to the fact that KOISO opposed the first pact
5 (T. 32409) in 1939 and 1940 and had retired to his
6 home in the country shortly after the YONAI Cabinet
7 fell (22 July 1940) and had no part in the last
8 Tripartite Pact concluded by the KONOYE Cabinet on
9 27 September 1940.

10 (2) KOISO was opposed from the outset to
11 the conclusion of a military alliance between Japan,
12 Germany and Italy. A disagreement of views between
13 the War and Navy Ministers arose in 1939 during a
14 Five Ministers' conference (Premier, War, Navy,
15 Foreign, Finance) over the problem of the tri-
16 partite alliance. KOISO was asked by Lieutenant
17 Colonel IWAKURO to use his good offices to act as a
18 mediator to settle the deadlock resulting from dis-
19 agreement between the two Ministers. IWAKURO had
20 called on KOISO as the emissary of the War Ministry.
21 KOISO declined, however, and expressed his views
22 against the tripartite alliance. Explaining his
23 refusal later to the Premier, KOISO again expressed
24 the same views in opposition of the alliance (TANAKA,
25 T. 32531) as an advice to Premier HIRANUMA and

counselled that it be abandoned (T. 32235) as was confirmed by TANAKA (T. 32531) and later by IWAKURO in a document offered in rebuttal but rejected by majority vote (T. 38510). KOISO stated the alliance would be used to make Japan a cat's-paw (T. 32531) for Germany and Italy and that Japan had nothing to gain and that as a matter of fact it would irritate the United States and Great Britain to the detriment of Japan (T. 32235).

KOISO also believed a nonaggression pact with Soviet Russia would be of more value and would be honored by all countries and was opposed to such military alliances for reasons quite similar to those expressed by ISHII opposing said alliance at a later date (26 September 1940) in a Privy Council meeting (T. 6387).

(3) The YONAI who helped form the KOISO-YONAI Cabinet testified in this case, and has been labeled as a peace advocate and was not indicted for his activity as joint Premier and Navy Minister in the KOISO-YONAI Cabinet or for action of the YONAI or HIRANUMA Cabinets.

KOISO was opposed to the conclusion of the tripartite alliance as Overseas Minister in the YONAI Cabinet in 1940 just as he had been in the HIRANUMA

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25

Cabinet in 1939. The YONAI Cabinet fell 22 July 1940
1 and was succeeded by the KONOYE Cabinet which later
2 concluded the pact. (T. 41326).
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25

The Prime Minister YONAI as well as the
1 Foreign Minister ARITA of the same cabinet were equally
2 opposed to the tripartite alliance, but no discussion
3 or action on the tripartite alliance was taken by this
4 cabinet. The tripartite alliance was signed 27 September
5 1940 by the KONOHE Cabinet (tr. 36,194). Particularly,
6 a problem of diplomatic policy as important as
7 that of concluding an alliance between Japan, Germany,
8 and Italy was a matter outside the authority of KOISO,
9 the Overseas Affairs Minister, and about which he would
10 not make a rash or independent statement. That he did
11 not seek on his own to feel out the German intentions
12 and desires is also clear from the testimony of TOKUGAWA
13 (tr. 32,517) and KOISO (tr. 32,237). Furthermore, such
14 information had already been obtained or requested
15 (tr. 6156 to 6165). When KOISO met Ambassador Ott it
16 was at the latter's request (tr. 32,468). He had just
17 met Ott for the first time and only listened, as the
18 interview was a brief one, to the suggestions of Ott
19 and did not enter into any discussion. Ott was trying
20 to ascertain Japanese views on Germany and apparently
21 confused KOISO's duties as Overseas Minister with
22 those of the Foreign Affairs Ministry (tr. 32,234-5 and
23 32,469). It is also clear from the testimony of witness
24 TOKUGAWA, Yoshitomo (ex. 3389, tr. 32,517) and of KOISO
25

(tr. 32,237) that Ambassador Ott's telegram (ex. 523, tr. 6174) merely contained Ott's own conjecture, intended, we submit, to arouse action from the German Foreign Minister and to make his activity look more favorable in the eyes of his home government (tr. 32,470). Therefore, it was written as though he had influenced, and was conveying, the views of KOISO, a known opponent to the alliance (tr. 32,411) (32,468).

That Ott often was motivated by such desire is confirmed by evidence concerning other telegrams addressed by Ott to his own government, which Ott admitted were filled with groundless allegations based upon his own hopes and conjectures. Defendant TOGO also testified to that effect (tr. 35,735-6) (F 134. G32). KOISO was reported by advocates of the tripartite alliance to have opposed it. Yet the prosecution endeavors to support their charge against KOISO on the ground that he favored its conclusion, relying on this distorted telegram sent by Ott, and on what is purported to be a Domei Radio Report (ex. 2214).

Ott stated several times in his own affidavit (ex. 3579, tr. 34,863; 34,874; 34,901 and 34,903) that he had used the names of Japanese leaders "for the reason that it might add to the weight of the report in the mind of the German Foreign Minister" and that

1 some of his reports were based on hearsay or were
2 erroneous (tr. 34,866; 34,878). We submit this
3 definitely substantiates our statement thereabout.
4 Also in relation to this telegram see paragraph (8) on
5 the last page of Section 5 below.

6 (4) The prosecution offered in evidence a
7 German document purporting to quote an alleged press
8 interview of Overseas Affairs Minister KOISO to show
9 that KOISO was connected with the realization of the
10 tripartite military alliance between Japan, Germany,
11 and Italy (ex. 2214, tr. 15,816 - 15,818).

12 We objected to this document because the
13 original, in German, contained many ambiguous points as
14 to who was speaking, and as to the authenticity of the
15 contents not being guaranteed or certified to by the
16 sender, as is shown on the face of the document. It
17 was later admitted by the prosecution that ARITA, the
18 Foreign Minister, had been confused with KOISO, the
19 Overseas Minister, by the translators (tr. 32,199).

20 Later in KOISO's individual defense phase,
21 we moved that the court strike this document or dis-
22 regard the latter part of said exhibit 2214, on the
23 ground that it lacked the necessary requirements to
24 be received in evidence (tr. 32,201).
25

Defendant KOISO had denied making any such

statement as contained therein, but stated that ARITA
1 may have done so (tr. 32,234; 32,235). In response
2 to our motion for dismissal, the prosecution stated:
3 "On 8 May 1939 he (KOISO) was discussing with ITAGAKI
4 the military alliance with Germany and Italy" (ex. 2214,
5 t. 16,866). However, this allegation of the prosecu-
6 tion we believe in good faith was made as a result of
7 careless and erroneous reading of said document; at any
8 rate, it is not true, as the original of said document
9 shows. We examined ARITA on this matter and he was
10 very evasive and said he had no recollection about it
11 (tr. 30,009 to 30,014).

13 Later, however, after consultation, the latter
14 half of this evidence was withdrawn by the prosecution
15 against KOISO, as it was found KOISO's name by error
16 had been substituted for ARITA's and that the speech
17 was made by ARITA and should not be attributed to KOISO
18 (tr. 32,199 to 32,201). The fact that the prosecution
19 are trying to utilize this Domei Radio Report of a
20 press interview and the distorted Ott telegram to not
21 only charge KOISO on the tripartite alliance issue,
22 but since they also are trying to use this evidence to
23 charge him in both the Netherlands and the French Indo-
24 China phase, indicates the weakness as well as the lack
25 of evidence to show any unlawful action or motives ex-

1 isted in relation to KOISO. Further, the contents of
2 this radio report were merely garbled opinions of a
3 newspaperman which were not substantiated and would
4 not have any probative value to show that KOISO was an
5 advocate of the tripartite military alliance, as an
6 examination of the original document will disclose
7 (tr. 32,200).

8 (5) The materials offered for contradicting
9 as well as refuting the prosecution's evidence we be-
10 lieve have succeeded in showing that KOISO had con-
11 stantly opposed the conclusion of a tripartite alliance
12 and that there is no evidence to support the prosecu-
13 tion's allegations (tr. 32,410).

14 (6) An excerpt from the entry of the SAIONJI-
15 PARADA Memoirs No. 324 (May 8, 1939), which the prosecu-
16 tion offered in evidence (ex. 3801-B, T. 37,814), when
17 examined, shows KOISO was not expressing his opinion
18 but that KOISO had expressed what he had heard was
19 the army opinion (tr. 37,890, 37,891, 38,008 to 38,010)
20 that the officers and men at the front are displeased
21 with British and French aid to Chiang Kai-shek, and an
22 alliance with Germany and Italy was being asked by the
23 army to alleviate their feeling before requesting the
24 good offices of Britain and France to act as mediators
25 in order to terminate the China Incident speedily.

1 The next sentence which HARADA characterizes this state-
2 ment of the army as "a usual pet expression" was agreed
3 to by KOISO as being the army's usual pet expression,
4 so it is clear from this it was not KOISO's opinion,
5 which is further clarified by the paragraph which
6 followed. (See correction at tr. 38,008 to 38,010.)

7 (7) KOISO stated that in May 1939 he had
8 expressed his opposition to the conclusion of the tri-
9 partite alliance to Premier HIRANUMA and Vice-War Minister
10 YAMAWAKI as discussed above in paragraph (2).

11 Moreover, a previous entry in the SAIONJI-
12 HARADA Memoirs No. 321 (April 18, 1939) states that
13 Colonel IWAKURO had sent a man to ARITA, the Foreign
14 Minister, to urge the establishment of a military
15 alliance, but that he had been pressed by KOISO to calm
16 down. This eloquently testifies to the fact that
17 HARADA also knew that KOISO was an opponent of the
18 tripartite alliance, and contradicts the prosecution's
19 interpretation of No. 3241 (tr. 32,405) (tr. 32,409).

20 (8) We further submit that entries of the
21 SAIONJI-HARADA Memoirs being hearsay based on hearsay,
22 since they are not even taken from original entries,
23 they are often found to be inconsistent and distorted
24 and should fall before direct testimony or the mere
25 denial of an accused (tr. 32,406). It is also clear

from the testimony that KOISO had advocated for years:

1 a speedy settlement of the China Incident, request-
2 ing Britain and France to assume good offices for media-
3 tion (tr. 32,231).

4 (9) We submit KOISO is not amenable in any
5 way to the evidence produced against him under count 5
6 of the indictment.

7 (10) The prosecution states at transcript
8 page 461 as follows:

9 "We suppose that the first universally recog-
10 nized doctrine is that self-preservation is the first
11 law of nature."

12 "We agree with this statement and KOISO be-
13 lieved the action taken by Japan in Manchuria, China
14 and the Southern Areas was for self-preservation or for
15 the purpose of self-defense, and was, as stated by
16 responsible leaders, to be based on the first law of
17 nature. For what reason should he doubt such state-
18 ments made by Japanese Government spokesmen that China
19 broke this first law? Or Soviet Russia? Such spokes-
20 men believed there was a limit to self-preservation,
21 which must not be overstepped; but that a nation's right
22 of self-defense was protected by international law.

23 China might contend, as it was hypothetically
24 argued, that it was for the self-preservation of China
25

1 that she destroyed the Japanese railroad at Liutiaukou
2 and attacked the Japanese troops at Marco Polo Bridge.
3 However, the South Manchuria Railway was owned by Japan,
4 according to the provisions of an international treaty,
5 and the stationing of troops in North China was enforced
6 publicly by virtue of the provisions of an international
7 treaty. How could KOISO determine whether the actions
8 of China which violated the provisions of the treaty
9 were not illegal actions? Were there no other aggres-
10 sive actions against Japan in utter violation of the
11 neutrality treaty ~~that~~ drove her into the tripartite
12 alliance despite the opposition and counsel of KOISO and
13 later of ISHII and other statesmen of Japan (tr. 6387,
14 31,235, tr. 32,410)?

15 America, Britain and the Netherlands by power-
16 ful combined strength in league with China were being
17 accused of provocative actions against Japan in mili-
18 tary as well as economic fields by the A.B.C.D. encircle-
19 ments; this finally led to the United States in the
20 course of negotiations handing Japan the "Hull" note, which
21 America herself is said to have believed to be im-
22 possible of acceptance. Japan was said to be in a des-
23 perate situation. These actions were said to over-step
24 the necessary limit of self-preservation.

25 Japan was defeated after receiving the

necessary killing, wounding and destruction, and abandoning arms, is relinquishing factories and other resources by way of reparations to the Allied Powers. The defeated have always been punished by way of reparations. However, the might of the victor does not mean that all their former policies are now considered to have been proper, just, and wise, and that the defeated were foolish or unreasonable in their belief, fears, and actions.

The right to exercise self-defense should by no means be a law to be applied favorably only to the victors. There are three definite and separate hostilities in this period, the first and second being very remote from the last.

The prosecution, at transcript page 462, pointed out to the Tribunal the object of this trial in the following words:

"Such a finding may well prevent such individuals as these accused or their prototypes or followers from gaining seats of authority or position of influence in their own community."

"As it possible for any statesman or any man taking up any important position of authority during one of said three periods to disbelieve other government leaders or no matter who he may be, to disregard the security, self-preservation, happiness and develop-

ment of his country and his people? Even the leaders
1 of barbaric and illiterate races held these ideas of
2 trust, confidence and patriotism.
3

4

5

6

7

8

9

10

11

12

13

14

15

16

17

18

19

20

21

22

23

24

25

1 KOISO, as will be stated fully in a later
2 section, favored non-aggression pacts (HIRANUMA Cab-
3 inet) as more favorable and conducive to peace than
4 military alliance and warned HIRANUMA (T. 32,235),
5 the same as ISHII warned TOJO (T. 6387) and the
6 KONOYE Cabinet that Hitler would make a cat's-paw
7 of Japan and was a dangerous character who could
8 not be trusted not to break an alliance, but despite
9 such warnings, on 27 September 1940 the pact was put
10 through and proved a bar in Japanese-American
11 negotiations.

12 (11) In relation to the Anti-Comintern Pact
13 of 1938, renewed in 1941, the Tri-Partite Pact of 1940
14 and the Cultural and Trade Agreements signed between
15 Japan in 1938 and 1939, and the No Separate Peace Pact
16 of 1941, the prosecution contends that these agreements
17 signed by the military representative on behalf of their
18 separate countries were concluded with the view of
19 obtaining the ends of Count 5 in the Indictment.
20 We submit that prosecution evidence (Ex. 480, 483,
21 37, 38, 39 and 589) indicates this could not be true
22 in regard to the Anti-Comintern Pact and the Cultural
23 and Trade Agreements. As to the other pact, treaties
24 and agreements, in their conclusion the will of
25 the State was expressed by the signed instrument

1 to preclude the extension of hostilities and the aim
2 of the aforesaid pact was defensive and pacific as
3 made clear by prosecution evidence. (Ex. 43, 554,
4 553-p 3, and 558-p 1.) The prosecution construes
5 "Establishment of a Co-Prosperity Sphere" to mean
6 or indicate "invasion." This is erroneous. States
7 lying in geographical propinquity are deeply affected
8 by conditions of their neighbors, and the above phrase
9 means that countries with common interests should
10 unite their efforts to cooperate and further their
11 mutual prosperity taking into consideration the
12 resources and needs of their respective people in a
13 regional community, itself a component and cooperating
14 part of the universal community, thus cooperating and
15 contributing to the progress of culture, well-being
16 and understanding, and taking advantage of the special
17 abilities of each to contribute thereto. Court
18 exhibits (Ex. 529-p 1, 553-p 3, 557-p 1, 558- pp 1 & 2)
19 indicate that although misuse can be made of the term
20 "Co-Prosperity", in a sense which it originally does
21 not possess, it is improper and erroneous to give it
22 such meaning.
23

24 Concerning war criminals of Germany, who
25 endeavored to drive Japan into a war with the U.S.S.R.,
the United States and Great Britain, the Nuernberg

1 decision did not question the treaty of alliance
2 between Germany and Japan but only stated, "Ribbentrop
3 attended a conference in May 1941 with Hitler and
4 Antonescuc relating to Rumania's participation in
5 the attack on the U.S.S.R. He also consulted with
6 Rosenberg in preliminary planning for political
7 exploitation of Soviet territories and in July 1941,
8 after the outbreak of war, urged Japan to attack the
9 Soviet Union." This confirms the error of the prosec-
10 ution's view. KOISO at the conclusion of the Anti-
11 Comintern Pact, was residing in Keijo, Korea.

12 As Minister of Overseas Affairs in the
13 HIRANUMA Cabinet in 1939, which was after Ribbentrop's
14 approach to Japan in the early part of said year,
15 cabinet opinion was divided as to concluding said
16 alliance, and KOISO opposed it and a committee of those
17 mostly concerned was set up to study this problem, but
18 they never reached a conclusion. (Ex. 504; T. 6108).
19 The cabinet fell 30 August 1939 as the result of the
20 conclusion of the Non-Aggression Pact between Germany
21 and U.S.S.R.; 23 August 1939 KOISO resigned as Minister
22 of Overseas Affairs (T. 5859, Ex. 114), and took no
23 part in the conclusion of the Japanese-German Alliance.
24 On 16 January 1940 KOISO joined the YONAI Cabinet as
25 Minister of Overseas Affairs, but in this cabinet the

1 Prime Minister, YONAI, Foreign Minister, ARITA, the
2 defendant KOISO and others opposed the conclusion of
3 the Tri-Partite Alliance during their tenure of office.
4 Dissatisfaction on the part of the Army concerning
5 this opposition caused the cabinet to fall 22 July 1940
6 and KOISO was obliged to resign (Ex. 515, 520, 530,
7 531 and 532, T. 5865 - 5866).

8 SECTION 5 -- RELATING TO NETHERLANDS
9 COUNTS 4, 14 and 32 (G 29, G 34 (G 169)

10 (1) In the Netherlands phase the prosecution,
11 again, cited the Ott telegram, and allege KOISO, as
12 Overseas Minister, on 24 June 1940, showed his interest
13 by making an inquiry of Ott (T. 11,639). We discuss
14 this evidence fully under Section 4, par. (3) above
15 and (T. 32,517, Ex. 3389, T. 32,237) in par. (8) hereund-
16 er.

17 (2) The prosecution stated one of the first
18 moves of the new KOISO - YONAI Cabinet made by Prime
19 Minister KOISO, in his speech before the Diet,
20 7 September 1944, promised independence to the
21 Netherlands Indies. The prosecution stated no
22 details were given, however, as to how, when and to
23 what extent independence would be granted and, indeed,
24 even at this stage there was no intention to take
25 definite steps in that direction (T. 11,666). Why,

then, did KOISO make the announcement?

1 (3) The prosecution also offered against
2 KOISO an alleged reply at the time he was Overseas
3 Minister in a discussion over the SHINOHARA speech on
4 population and economic questions of the South Seas
5 region and remarks of FUKUDA (Ex. 2215-A, T. 15,819
6 and Ex. 3382, T. 32,423 - 32,425). KOISO's testimony
7 (T. 32,244), as well as that of TANAKA Takeo (T. 32,532)
8 show what KOISO (T. 32,464-7) meant by his actual reply.
9 They state the reply that was actually made was to the
10 effect that economic influence should be extended peace-
11 fully to the South and that their discussion did not
12 touch or relate to any military advance or aggressive
13 military operation. One of the reasons why the
14 prosecution were misled is that the prosecution
15 translated the Japanese word "hatten" to mean "expansion"
16 when said word is generally translated as "development"
17 and used in that sense. Here these men were discussing
18 economic developments to be handled and population
19 problems (T. 15,822) to be handled which would arise
20 after peace was restored (T. 15,822) and be developments
21 in cooperation with other peoples in a spirit of friend-
22 ship and conciliation; that is, they were discussing a
23 probable and natural, not an unreasonable or strained,
24 development or expansion by military force (T. 15,825).
25

1 The document's words "the south" used in his alleged
2 reply are indefinite but they do not imply they
3 indicated the Netherlands East Indies or French Indo-
4 China except as outlets for over-population (T. 32,425),
5 and as to the primary point of the discussion as to
6 economic development, KOI-0 only indicated the region
7 which included Formosa (T. 15,821) (T. 15,826) and the
8 Japanese mandated areas (T. 32,426). The FUKUDA and
9 SHINOHARA statements which are being discussed also
10 makes this point clear that no unlawful action was
11 contemplated. Furthermore, no special steps were
12 taken by the Cabinet to carry out such programs
13 (T. 32,467).

14 (4) The prosecution alleged, quoting from
15 Van Mook's book (Ex. 1309-A, T. 11,796), that KOI-0,
16 in a press interview (August 3, 1940), reproached the
17 Netherlands Government, saying it was extremely
18 oppressive towards the natives of the Netherlands East
19 Indies. That document, however, contains mere hearsay
20 opinion of Van Mook concerning a newspaper article
21 and does not state the truth (T. 32,427). We submit
22 such evidence has no probative value, nor that if
23 KOI-0 had actually made such a statement, that it would
24 not prove any connection with any unlawful action.

25 With regard to the prosecution summation (G-29

and G-34):

1 KOISO had been designated as chief delegate to
2 the Netherlands East Indies in July, 1940 but his
3 dispatch was cancelled, not because, as the prosecu-
4 tion contends, he was unacceptable to Holland, but
5 because KOISO himself declined the offer on the
6 ground that he thought he was not suited for the task.
7 (T. 32,344). As to the circumstances of the selection
8 of KOISO to head the delegation, he had, of course,
9 nothing to do with it, and this evidence has no
10 probative value to make KOISO responsible for the
11 acts of others thereafter. (T. 32,429).

13 (5) In the fourth paragraph of Exhibit 1344
14 we find the KOISO-YONAI Cabinet had decided that the
15 independence of the East Indies should be declared at
16 the next Diet session. This evidence only shows KOISO
17 had the intention of recognizing the independence and
18 self-government of the East Indies and does not prove
19 that KOISO approved or was connected with any prior
20 prosecution of an alleged illegal war against this area.

22 (6) The prosecution relies on groundless
23 suspicion that KOISO was connected with alleged aggress-
24 ion against the Netherlands East Indies. (G 169).

25 The KOISO-YONAI Cabinet, while primarily
working to devise a method to bring about the conclusion

1 of hostilities, tried to better conditions in various
2 areas and granting independence was in line with the
3 earlier fundamental policy of Japan to allow the eman-
4 cipation of all races of East Asia to which the policy
5 of their cabinet was a return and was contrary to the
6 territorial incorporation policy.

7 If the KOISO Cabinet had been aggressively in-
8 clined they could have invaded and annexed these terri-
9 tories and no such declaration promising independence
10 would have been made in the Diet.

11 The roundabout theory of the prosecution is
12 based on a presumption that overlooks the fact that if
13 KOISO had any unlawful aggressive connection with this
14 matter he would not have taken promptly such a step as
15 to formally promise independence at a Diet session.
16 The fact that steps taken by the KOISO-YONAI Cabinet
17 following the formal promise did not result in a full
18 immediate granting of independence and that the next,
19 SUZUKI Cabinet, did not carry out this promise until
20 17 July 1945 (Ex. 1350, T. 12,236) does not constitute
21 ground on which to question the good faith of KOISO's
22 actions. We submit that it would be improper to use
23 this as evidence of any connection with or of an
24 intention to commit an illegal act by KOISO.
25

(7) We submit KOISO is not amenable in any

1 way to the evidence produced against him under Counts
2 4, 14, or 32 of the Indictment.

3 (8) In relation to the Ott telegram (Ex. 523,
4 T. 6174) (LL-36): The prosecution's claim that KOISO
5 was seeking information on 24 June 1940 as to Germany's
6 attitude as to Indo-China and the Netherlands is also
7 questioned as unreasonable, since in May 1940 this
8 information had already been furnished as to the
9 Netherlands and published in the papers (Ex. 517 to 519)
10 (T. 6156 to 6162); and as to Indo-China, information
11 had been requested (Ex. 520) on 19 June 1940 (T. 6163-5).
12 Why should KOISO at this later date make such inquiry?
13 This further confirms our contention as to said
14 telegram being a device of Ott used for purposes of
15 his own (T. 32,468 to 70) and falsely quoting KOISO
16 in order to acquire certain information or reaction
17 from Germany for purposes of his own. It is further
18 submitted to be contrary to the rules of evidence to
19 use the record of an alleged conversation between A (Ott)
20 and B (KOISO), against B when such record was compiled
21 by A without knowledge of B. Although it may be used
22 against A, it should not be used against B unless the
23 signature of B or other evidence of confirmation by B
24 is definitely established. Here there is no evidence
25 of confirmation but a denial (T. 32,237) supported by

1 the testimony of the interpreter present (TOKUGAWA,
2 T. 32,517). Since the conversation was through an
3 interpreter, there is no assurance that opinions or
4 judgments of the interpreter, as well as of the
5 recorder, were not included. Therefore, there arises
6 automatically great doubt as to the accuracy of these
7 records made (24 June 1940, Ex. 523, T. 6175) from
8 memory, four days after the conversation took place
9 (20 June 1940, T. 32,516). The above legal principle
10 should also apply to the use of the KIDO Diary and
11 the SAIONJI-JARADA Memoirs.

12 Also see (3) Section 4 above for previous
13 discussion on this telegram.

14 KOISO resigned 22 July 1940 and retired as a
15 private citizen shortly thereafter (T. 735).

16
17 SECTION 6 -- RELATING TO COUNTS 4 and 15 --
18 FRANCE.

19 (1) KOISO is not charged in Count 23 with
20 regard to initiating and waging an illegal war against
21 the Republic of France.

22 (2) The prosecution placed in evidence a
23 telegram from German Ambassador Ott to the German
24 Foreign Office in 1939 (Ex. 614, T. 6792), in which a
25 report was made of the possibility of Japan taking part

in the war against Britain and France. KOISO was at that time the Minister of Overseas Affairs and the prosecution, without considering the nature of his duties (LL-33, LL-40) and that he did not have the duties or of the responsibility of a Foreign Minister, wish the Court to infer KOISO must have been responsible for failing to prevent alleged aggression against the Republic of France. It is already shown, however, how the official authority of the Overseas Minister was very limited (Ex. 87, T. 505, Organization Overseas Ministry); that important foreign policies were decided at the Five Ministers' Conference and that the Overseas Minister was excluded from such Conference (TANAKA, T. 32,530). Moreover, it was stated simply that KOISO was the Overseas Minister and no evidence was adduced to establish the relevancy of this statement or the relation between KOISO and any alleged aggression against the Republic of France.

(3) The prosecution contends (LL-49) that it was illegal that the Japanese troops at Saigon handed an ultimatum to the Governor-General of French Indo-China on March 9, 1945, and demanded its approval in a short space of time. This, however, was not by decision of the Supreme War Guidance Council that a reply was requested in a short space of time, but was

1 by the Supreme Command and was an attitude taken by
2 diplomatic representatives on the spot at the request
3 of the Commander of the Japanese forces on the spot.
4 (T. 32,471). The testimony of TOJO (T. 36,819) and
5 of KOISO (T. 32,245) make it clear that such matters
6 were decided on the spot and were measures which belonged
7 to the field of the High Command and were matters outside
8 the responsibility of Premier KOISO. (T. 32,471-2).

9 The reason why there was included in the
10 measures for French Indo-China a stipulation with
11 respect to a case in which French Indo-China might
12 reject Japan's demand was explained by those concerned
13 as follows:

14 The Governor-General of French Indo-China took
15 action in accordance with instructions from the Vichy
16 Government in France and was at first cooperative.
17 Japan's military actions in French Indo-China had been
18 based on an agreement already concluded between the
19 Japanese Government and the Governor-General of French
20 Indo-China. A part of the Japanese troops were engaged
21 in military actions with perfect understanding of the
22 French Indo-China Government (TOJO, T. 36,823).
23 KOISO, T. 32,471). Since that time, however, especially
24
25

1 as the Pacific War had developed in favor of the Anglo-
2 American side, the French Indo-China Government gradu-
3 ally indicated it was shifting so as to be able to
4 come under the authority of the De Gaulle regime, and
5 its attitude towards Japan became exceedingly non-
6 cooperative around February, 1945. (TOJO, T. 36,823;
7 KCISO, T. 32,471).
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25

Prosecutor ONETO, in his opening statement, stated that the De Gaulle regime declared war against Japan on December 8, 1941, while it was in Africa (T. 6724), and this was known (T. 32,441-2) to the Japanese Government by Minister OKAMOTO's report concerning a Reuter's despatch of September 1, 1944. (Ex. 3556, T. 34,550). However, the situation in the Pacific area had become unfavorable to Japan day after day and the condition became so difficult for Japan that there seemed to be imminent the danger of an immediate landing in French Indo-China of allied forces. The decision of the High Command to meet this threatened danger was declared necessary as a military measure to be taken for self-defense in the view of the Supreme Commander of the Japanese forces on the spot. It was said that military necessity dictated meeting this possible allied strategic move and this action by the Supreme Command was believed to be in accordance with their power and to be in accordance with the correct standard for military actions against a belligerent according to international law, and was not considered to be an illegal act in any sense.

Furthermore, it was outside the scope of the Cabinet to act on such matters as were in the sphere

1 of the Supreme Command. Moreover, with a view to
2 dealing with French Indo-China as smoothly and amic-
3 ably as possible, it had been requested that the ap-
4 proval of French Indo-China be obtained in advance
5 to have troops and police forces reorganized and
6 placed under the control of the Japanese Commander.

7 The circumstances in this regard are clearly
8 stated by KOISO in his redirect examination. (T.
9 32,471). In the document entitled "Measures Towards
10 French Indo-China to Meet the Sudden Change in the
11 Situations," dated February 1, 1945 (Ex. 661, T. 7165),
12 in the note at the end of item 2, it was stipulated
13 that the rights and interests of the French people in
14 general shall be treated leniently (T. 7169), and in
15 Ex. 663, there was a stipulation regarding the pro-
16 tection of rights and interests of the French people.

17 (4) We submit KOISO is not amenable in any
18 way to the evidence produced against him under Counts
19 4 and 15 of the Indictment.

20 (5) Relating to Ott's telegram (Ex. 523)
21 see (8) Section 5 above and (3) Section 4 above.

22 Section 7: Relating to Counts 4, 17, 26
23 and 36-USSR.

24 1. Witness TANAKA, Ryukichi, related that
25 prior to the outbreak of the Changkufeng Incident,

"I did not see any of these documents directly or myself at the Divisional Headquarters, but judging from common military knowledge, I would say that the order for concentration was naturally given by Commander of the Army, KOISO." (T. 22,751)

This was a mere conclusion of the witness and was not true, but was presumed from the fact that at one time KOISO had been the Commander of the Army, but the evidence shows such order was not given by KOISO but by Commanding General NAKAMURA who succeeded KOISO (T. 32,232-3) (T. 32,511-3). Furthermore, the order given by NAKAMURA was for concentration and was not an order for attack (T. 22,751). The prosecution has tendered no evidence whatever to connect KOISO with Counts 26 or 36.

1) With respect to the testimony of TANAKA, Ryukichi, it is refuted by the testimony of KOISO (T. 32,232-32,233) and by the testimony of KIFANO, Kenzo, chief of staff of the Korean Army. (T. 32,511 and 32,513) When authority to concentrate the troops was requested by one of his commanders, General KOISO sent a wire to Tokyo to the General Army Staff Headquarters for instructions. The reply telegram to this request did not reach Seoul until July 16. On July 15 KOISO had received orders transferring him,

1 preparatory to his retirement from active service, to
2 the Army General Staff Office (Ex. 114). The succeed-
3 ing Commander, General NAKAMURA, took measures for
4 concentration on the basis of orders received from
5 Tokyo. KOISO therefore had nothing to do with issu-
6 ing any order for concentration of troops, or for the
7 events that took place.

8 2) With respect to the incident at Khackhin
9 Gol River, (Count 26), the action of such troops were
10 under the jurisdiction of the High Command. This
11 took place at the time when KOISO was an Overseas
12 Minister and the Cabinet had nothing to do with the
13 High Command. That this was a border dispute be-
14 tween Manchukuo and the Mongolian Peoples' Republic
15 is further submitted and confirmed by the fact that
16 it did not extend beyond the area where it occurred,
17 and moreover, it was amicably settled soon after
18 between Japan, Manchukuo and Soviet Russia.

19 KOISO was an advocate of a non-aggression
20 pact between Japan and the Soviet Union, as mentioned
21 in Section Two above. KOISO regretted the outbreak
22 of the incident from its very outset and fervently
23 hoped for its speedy settlement for the restoration
24 of tranquility. Even at the time of the China Affair
25 he was from the very beginning an advocate of a

1 local settlement. Without even considering any dis-
2 pleasure he might cause among certain army authori-
3 ties, he submitted his frank opinions and strongly
4 insisted upon a quick local settlement.

5 Considering his many humanistic acts, I
6 believe we can see that he was a moral as well as
7 religious and upright man, and a profound believer
8 in friendship and peace and in non-interference in
9 domestic affairs of other nations.

10 It is also mentioned in the preceding Section
11 that the Overseas Minister had no voice nor right to
12 attend the Five Ministers' Conferences which deliber-
13 ated on important foreign policies. (TANAKA T. 32,530).
14 Their decisions were not referred to the cabinet for
15 approval as the Foreign Minister had authority to act
16 independently and did in such matters as this without
17 such reference.

18 3) We submit KOISO is not amenable in any
19 way to the evidence produced against him under Counts
20 4, 17, 26 or 36 of the Indictment.

21 4) Furthermore, in Section H of the prose-
22 cution's Summation, KOISO is not directly named or
23 accused of improper or unlawful activity. Where
24 they say all the accused were organized and planned
25 aggression against the USSR, they ask the Court to

1 presume, under their theory of conspiracy, (par.
2 H. 185 to 193) that the accused are responsible for
3 the actions of others and of each government of
4 Japan, based on a presumption (H 26) that such alleged
5 criminal plans of aggression existed or can be in-
6 ferred from the evidence. Under such practice a
7 course of action taken by a defeated nation which
8 resulted in damage to a victor nation could under
9 any conditions be said to have resulted from a con-
10 spiracy or vice versa, depending on who won the war,
11 but that does not furnish proof by evidence of proba-
12 tive value sufficient to support a charge and con-
13 viction from merely being a Japanese or an official
14 of the government for a period of time, and there is
15 more than doubt (H 192) that the accused were always
16 organized and acted knowingly, fully understanding the
17 character of their actions and aware of their conse-
18 quences.

19 SECTION 8 -- RELATING TO COUNTS 7-13, 16,
20 29 TO 31 AND 34 -- KOISO-YONAI CABINET.

21 We now proceed to the consideration of the
22 period (FF-113) when KOISO occupied the position of
23 Prime Minister in the Joint KOISO-YONAI Cabinet.
24

25 (1) KOISO became Premier on July 22, 1944,
several years after the war commenced by the TOJO

1 Cabinet had led to its collapse, with overwhelming
2 defeat certain. The reason KOISO assumed the post
3 of the Prime Minister was not due to any request of
4 TOJO or the TOJO Cabinet to take charge of the situa-
5 tion, which was at one time asserted by the prosecu-
6 tion in prosecution document 0001 but later corrected
7 as an error in a supplement thereto, but it was be-
8 cause of an Imperial Order sent to KOISO, who was in
9 Northern Korea when he received the telephone call
10 from the Grand Chamberlain (T. 32,533) and was in-
11 formed of the summons of His Majesty the Emperor
12 based on the recommendation of the Conference of the
13 Senior Statesmen (Jushin). (Ex. 1280, T. 11,383;
14 TANAKA, T. 32,535; Ex. 1278; KIDO, T. 31,103-4).
15 (Ex. 3229, T. 29,265-6).

16 This summons meant that he was to be ordered
17 by His Majesty to form a new Cabinet. KOISO studied
18 what kind of policy to adopt to carry out the affairs
19 of the state. He was not familiar with the details
20 of the war situation but thought it permitted of no
21 optimism. (T. 32,533). He stated he thought it no
22 longer the time now to continue the war, but the
23 time to seek an opportunity to make peace with the
24 Allied Powers. (T. 32,535, 38,928). However, such
25 a matter as this could not be decided until after he

1 had an audience with the Emperor (T. 11,383 to
2 11,384), and it was discreet and tactful not to ex-
3 press openly such views at that time. Since the
4 TOJO Cabinet was the one in office when the war be-
5 gan, KOISO felt that if the coming Cabinet was to
6 end the war it was essential that Cabinet Ministers
7 be selected who would conform to that purpose. When
8 the KOISO Cabinet was formed, only three Ministers
9 were retained from the previous Cabinet: SHIGEMITSU,
10 Foreign Minister; ISHIWATA, Finance Minister; and
11 FUGIWARA, Munitions Minister. (Ex. 102)

12 KOISO had, in view of the increasingly grave
13 military situation, felt that the creation of any
14 friction from a change in these three posts would
15 cause uncertainty even if only for a moment both at
16 home and abroad and might bring great worry and
17 anxiety to His Majesty and cause a sense of uneasi-
18 ness to the people in general, which would be unfor-
19 tunate, so he had prudently for the time being made
20 the choice of retaining the three Ministers who were
21 responsible for diplomacy, finance and munitions.

22 Later KOISO undertook to reorganize the
23 Cabinet but it appeared that, because conditions
24 within the Cabinet were found to leak out in advance,
25 various obstacles were met (T. 32,542, 32,543) in the

1 carrying out of necessary measures. It is clear from
2 the exhibits (Ex. 1278, 1279 and 1280) that KOISO did
3 not voluntarily seek and gain the position of Prime
4 Minister, but the Imperial Summons came completely
5 like a bolt from the blue to him in Korea (T. 11,383).
6 He returned to Tokyo ignorant of the state of things
7 behind the scenes. (T. 32,532) He had been recom-
8 mended by Senior Statesmen and his character was
9 vouched for by those who knew him, but with the
10 majority it is stated he was not known, as with them
11 he had no intimate relations (T. 31,098, 31,099 and
12 31,100).

13 At the time of his Imperial audience he was
14 given the mandate to form a Cabinet in cooperation
15 with Admiral YONAI (T. 11,383). YONAI was a man
16 noted for peaceful policies and who has testified be-
17 fore this Tribunal and who has not been charged with
18 any crime although he was Joint Premier (T. 29,266)
19 as well as Minister of the Navy (T. 38,925) in the
20 KOISO-YONAI Cabinet, Navy Minister in the HIRANUMA
21 Cabinet, and Premier of the YONAI Cabinet (Ex. 102),
22 in 1940 when KOISO was Overseas Minister (T. 29,266)
23 (FF-113) (K-3, T. 40,539).

24 (2) The policy of the KOISO-YONAI Cabinet
25 with respect to measures to cope with the situation

1 was, first of all, tactfully to create a state of
2 national unity and launch headlong on peace negotia-
3 tion (11-50) at the earliest opportune moment.
4 (T. 38,928). At the same time peace campaigns were
5 to be conducted with China (T. 32,539 to 32,543) on
6 one hand (11-44), and on the other hand a way was to
7 be opened for an overall peace through Soviet Russia.
8 (T. 32,539). T. 32,54203). All government adminis-
9 trative measures were advanced along this line of
10 policy. (KANAKA, T. 32,543, 32,535). For this pur-
11 pose, they requested that the Supreme Council for the
12 Direction of War be established. Prosecutor Horwitz
13 declared in his opening statement (T. 681) (13 June
14 1946) it was established to effect harmony and
15 cooperation between the Government and the High Com-
16 mand, and was formatively given authority by Imperial
17 Order. It was testified to by defense witness FUJITA,
18 Tsuguo (T. 17,557) that the above organization was
19 different in this respect to the former Liaison
20 Conferences of the TOJO Cabinet. There was also a
21 difference in that of purpose. KOISO, in asking for
22 this organization, had the general purpose to devise
23 a method for bringing about an end to hostilities
24 by closer control and coordination of the policies
25 of the Supreme Command with those of the Government

1 and, by gaining knowledge of military plans, to pre-
2 vent interference with the policy of his Cabinet to
3 bring about peace as desired.

4 The council was established to further the
5 KOISO-YONAI Cabinet policies and measures for ending
6 hostilities. However, this council for direction of
7 war did not come up to the expectation of Premiers
8 KOISO or YONAI (T. 32,537-8), and the High Command
9 was prone to develop into unexpected directions
10 without the least knowledge of the Premier (T. 32,537-9).

11 Reduction of Japan's war potential was
12 accelerated owing to increasing damages by bombing
13 on manufacturing establishments and cities (T. 32,549).
14 Still it seemed impossible to realize the object
15 (T. 32,538) of administrative policies by attending
16 this council alone (KOISO, T. 32,255). Thereupon,
17 KOISO asked (T. 32,538), on 19 March 1945, to be
18 authorized to attend the Imperial Headquarters Con-
19 ference and received, by Imperial Rescript, such
20 authority about ten days before his Cabinet resigned.
21 KOISO wanted to learn the plans of the High Command
22 and be able to know the situations and developments
23 of operations, and to try to coordinate their actions
24 in accordance with government policy, but during said
25 ten days he was still not permitted, on the three

1 occasions (T. 32,539) he attended Imperial General
2 Headquarters Staff meetings, to take part in discus-
3 sions or learn about their plans or matters pertaining
4 to military operations and tactics (T. 32,538).

5 THE PRESIDENT: We will recess until one-
6 thirty.

7 (Whereupon, at 1200, a recess
8 was taken.)

9 - - -
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25

AFTERNOON SESSION

M
C
R
S
E
&
W
h
a
l
e
n1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25

The Tribunal met, pursuant to recess, at 1330.

MARSHAL OF THE COURT: The International
Military Tribunal for the Far East is now in session.

THE PRESIDENT: Captain Brooks.

MR. BROOKS: Resuming the reading on page 95.

Therefore, this move also failed to contri-
bute anything to KOISO's efforts to place control and
power to bring about peace into the government's hands
in order to put an end to the hostilities and coordi-
nate and control the fighting power and its action in
respect thereto. (KOISO, T. 32,255 to 32,256).

In this connection we wish to remind the
Tribunal of the fact that KOISO had brought before the
Supreme Council for Direction of War his plan for
peace negotiations with Soviet Russia and China as a
means to concluding the war. (TANAKA, T. 32,539, 32,541
and 32,542; KOISO, T. 32,253; KIDO, T. 31,115).

Thereupon, KOISO, to solve this deadlock,
asked authority to hold concurrently the portfolio of
the Minister of War and Premier. By this plan he
expected to grasp correctly the actual situation and
a voice in control of the High Command so that he might
be able, at the earliest possible moment, to carry into

1 effect the policy of his cabinet to develop and suc-
2 cessfully launch and conclude peace. However, this
3 plan required him to hold the War Ministership con-
4 currently which was only possible if the three big
5 chiefs of Army would approve his return to active mili-
6 tary service so as to qualify KOISO for the War Minis-
7 try. This met with their opposition as the Army knew
8 that as War Minister KOISO would be able to attend
9 High Command meetings and learn of operational plans
10 and conditions and would gain more control towards
11 furthering peace efforts which some disapproved of
12 because of first one reason or another. As a result,
13 the KOISO Cabinet resigned en bloc and gave up their
14 struggle after recommending a cabinet be given power
15 and control sufficient to end the hostilities. (KOISO,
16 T. 32,256, T. 32,260 to 32,263, and T. 32,528 to
17 32,544).

18 (3) The prosecution pointed out that KOISO
19 was President of the Imperial Rule Assistance Associa-
20 tion. However, in 1940 he was against its creation
21 in the YONAI Cabinet. (T. 41,326). As Prime Minister,
22 he was made ex officio the President of the association
23 in accordance with the rules of said association. The
24 said association had been formed in 1940 by the KONOYE
25 Cabinet. (T. 19,797). (T. 1,642).

1 Immediately after assumption of the Premier-
2 ship, KOISO sought to dissolve the Imperial Rule As-
3 sistance Association and to gain the confidence of the
4 people by restoring political parties. So although
5 at the outset he accepted the presidency of the asso-
6 ciation, he did so with this purpose in mind, because
7 its regulations provided that it was to be filled
8 as a matter of course by the Prime Minister, whoever
9 he may be. This had an advantage for KOISO, as a pre-
10 liminary step to bring about its dissolution, because
11 he learned that the President was empowered to revise
12 the regulations and even to order its dissolution.
13 (T. 19,797-8)

14 Under the rules, the Vice President handled
15 the management and was actually in full control of its
16 affairs. However, KOISO intended to use his power
17 under the rules and his position as President to bring
18 about its dissolution for the purpose of restoring
19 political parties to power. (T. 32,922, 32,925)

20 (4) During his tenure as Prime Minister,
21 KOISO, realizing, immediately after the formation of
22 his cabinet, that the situation both at home and abroad
23 no longer permitted of any deferment, sought at once
24 to strengthen Japan's diplomatic personnel in the Soviet
25 Union. He desired thereby to advance preparations for

1 peace with the United States and Great Britain through
2 the medium of Russia. He also commenced steps to
3 urge peace between Germany and Russia. On the other
4 hand, he also sought to make peace with the Chinese
5 Government in Chungking through the medium of the
6 Nanking Regime and thence to expand the effort to con-
7 clude peace with the United States and Great Britain.
8 However, because of Russian rejection of peace over-
9 tures and because of disagreement with certain mem-
10 bers of his Cabinet over his endeavors for peace, he
11 did not make any progress in spite of his anxious ef-
12 forts. The Tribunal's attention is especially called
13 to this situation and the other one next described
14 which caused KOISO's Cabinet to fall. KOISO tried to
15 determine upon an opportune moment to effect peace
16 speedily. Direct knowledge of the true state of
17 Japan's fighting strength and the plans of the High
18 Command were necessary. He could gain this only by
19 holding concurrently the post of War Minister. How-
20 ever, the question of his becoming concurrently the
21 War Minister met with such opposition from the Army,
22 it thereby rendered impossible the realization of what
23 he had in mind. Thus, he could only suggest and pray
24 for the appearance of a strong cabinet capable of
25 carrying out what he had intended and hoped to do.

1 He was compelled, due to such opposition from the
2 Army Big Three and certain members of his cabinet, to
3 resign. The actions of KOISO while Prime Minister
4 were consistently directed toward the end of grasping
5 an opportunity to terminate the war while endeavoring
6 to effect coordination between the government and the
7 High Command. All other measures were incidental to
8 the attainment of the main objective and it was be-
9 cause the final means to attain it was obstructed
10 by others that he was compelled to quit his post
11 as the efforts for peace by his cabinet were still
12 premature in that sufficient cooperation at that stage
13 could not be obtained, and those in control in the
14 High Command had yet to receive the atom bomb and
15 Imperial Order to shake loose their tenacious grasping
16 for a victorious conclusion of the holocaust of war.
17 (T. 31,242-8)

18 (5) We submit KOISO is not amenable in any
19 way to the evidence produced against him under Counts
20 7 to 13, 16, 29 to 31, and 35 of the Indictment.

21 (6) In relation to LL-45 and LL-46, the
22 prosecution, under paragraph LL-45 of their summation,
23 state that KOISO was on April 21, 1942 ordered a mem-
24 ber of the Committee for the Establishment of Greater
25 East Asia (T. 735) but he was relieved June 20, 1942.

1 They contend, under paragraph LL-46, that "In accept-
2 ing a place on the committee to effectuate the organ-
3 ization to realize the aggressive action proposed in the
4 conquest or domination of sovereign territories, KOISO
5 made his position with the militarists crystal clear."
6 However, this is mere presumption. Also, the matters
7 complained of by the prosecution were formulated in
8 January 1942 (T. 11,339, LL-45) and not in the period
9 of two months he was nominally a member.

10 When KOISO was ordered on April 21, 1942 a
11 member of the Committee for the Establishment of Great-
12 er East Asia, he was not connected with any government
13 office at all and was a civilian. (Ex. 114) He was
14 one of a few hundred members of the committee (T.32,428)
15 and his membership was in name only. He never attended
16 or joined any alleged deliberation of alleged aggres-
17 sive actions against Greater East Asia, and, further-
18 more, he was relieved of membership on June 20, 1942.
19 (T. 735)

20
21 (Ex. 114) Moreover, the prosecution adduced
22 no evidence at all to prove that KOISO conspired with
23 any so-called militaristic clique with respect to
24 aggressive actions, and, therefore, the above allega-
25 tion is a mere conclusion based upon mistaken specula-
tion on the part of the prosecution.

1 (7) The prosecution's original contention
2 was that they intended to establish that all the de-
3 fendants between January, 1928 and September, 1945,
4 and the Japanese Government which came into power on
5 13 December 1931, (Appendix A, Section 1, Indictment)
6 and all subsequent Japanese Governments for waging
7 consistent wars of aggressions, conspired and com-
8 mitted unlawful acts. However, the prosecutors' proof
9 was contrary to this assumption and it became apparent
10 that they would soon reach an impasse. Thereupon,
11 the prosecution began to shift away from their orig-
12 inal theory of guilt and conspiracy of all cabinets
13 and persons and took great pains to make their conten-
14 tions look theoretically consistent with evidence which
15 clearly refuted their original theory. We find that
16 many new and unreasonable theories of international
17 and criminal law have been put forth; they insist that
18 such law is alive and progresses. They have suggested
19 interpretations be made to avoid making ex post facto
20 law; but in fact such interpretations would create
21 new law and establish international law by untried
22 and unheard of theories of practice.

24 The Chief Prosecutor took pains to state var-
25 ious definitions on common conspiracy in his opening
statement and they have alleged on certain premises

1 that KOISO could be involved by inference and presump-
2 tion and should be made responsible and accountable for
3 acts of utter strangers to said accused who were al-
4 leged to be co-conspirators.

5 We submit the prosecutors not being versed in
6 Oriental affairs, especially in those of Japan, misun-
7 derstood or overestimated evidence considered unfavor-
8 able to the accused because much of such evidence and
9 theory has been supplied by Communistic and other mal-
10 content elements following the close of the war. Also
11 a sentiment of retaliation was still fresh and war-
12 time propaganda had played its part to create prejudice
13 and distort perception as to the true state of facts.
14 It stands to reason that the very misconceptions which
15 existed among statesmen gradually were embodied in
16 propaganda, but the folly thereof cannot withstand
17 comparison with the evidence.

18 We submit it is clear that their premises
19 in many instances have been based upon an unreasonable
20 assumption and that much evidence introduced under
21 such conditions was of no assistance to their theory
22 of guilt or conspiracy.

23 It is a mistake on the part of the prosecu-
24 tion to presume that all military actions taken by
25 Japan between January 1928 and September 1945 were

1 consistent only with a war of aggression under a com-
2 mon conspiracy or common plan therefor. Because the
3 defendant KOISO held public office during a certain
4 period the prosecution claims that it is natural to
5 hold him responsible, irrespective of his duties, for
6 what the prosecution allege to be unlawful acts or
7 unlawful conduct of rank strangers who are labelled as
8 being inspired by an alleged common purpose or plan.
9 Would this not truly be an exceedingly arbitrary pro-
10 cedure to punish an accused based on a presumption,
11 and even if there existed a code of very broad crimin-
12 al international law, would such a theory of justice
13 be approved or even if a construction were permitted
14 of international treaties and assurances in line with
15 their other theories, are we not asked to base too
16 many presumptions one on the other?

17 Is not each independent nation at liberty,
18 in consideration of prevailing international situa-
19 tions, to adjust her military preparations according
20 to her national strength from the point of view of her
21 needs for self-defense without making public officials
22 responsible for the use of such materials by others
23 over whom they have no control?

24 Especially, where international relations
25 are so complicated that a mere unforeseen incident is

1 liable to lead to a war, can reasonable grounds for
2 unlawfulness exist because certain officials ask for
3 or assist in the military preparations by a nation
4 according to her beliefs of what is proper for de-
5 fense and commensurate with her national strength, and,
6 if so, are others who failed to prevent such prepara-
7 tions or successfully to oppose their use to be respon-
8 sible because of their lack of foresight and inability
9 in their official position?

10 Do not all nations find it still necessary
11 to consider appropriate plans and preparations for
12 self-defense? Military preparedness is not unlawful,
13 we submit, and the use of such military force as has
14 been prepared to meet a given situation endangering
15 national interests has not been considered unlawful.
16 How will public officials of the future accept this
17 new responsibility? Who will want to take part in
18 the Military Service, Diplomatic Service, or in other
19 branches of the government if mere position and lack
20 of foresight can make one responsible for the acts
21 of total strangers miles away?

22 Mr. Justice Jackson, in the Nuernberg case,
23 contended that the defendants were indicted not be-
24 cause they conducted a war, but because they lead the
25 country into a war. We submit the prosecution evidence

1 failed to establish that KOISO was guilty of leading
2 his country into a war either in 1931, 1937, 1941, or
3 at any other time. Has not the prosecution apparently
4 adopted the Nuernberg theory? (K-3, T. 40,539)

5 (a) The Japanese Government's action in
6 assisting Manchukuo after she became what was believed
7 to be an independent state, in accordance with the
8 Japan-Manchukuo Treaty, should not make officers in
9 military service, acting under orders of such govern-
10 ment, responsible for any illegal act, especially an
11 officer occupying a secondary administrative position
12 like KOISO held.

13 Moreover, was not KOISO justified in believing
14 in the legality of the independence movement of Man-
15 chukuo? It was "de facto" as he thought, and his con-
16 victions were confirmed or strengthened when it was
17 later recognized by over ten other western independent
18 nations.

19 Since the destruction of the State of Manchu-
20 kup have the people of Manchukuo gladly accepted this
21 change and gone back peacefully to the folds of the
22 Chiang Kai-shek Government?

23 Looked honestly in the face, the independence
24 of Manchuria was brought forward by the inhabitants of
25 the five races therein, and today's current action in

1 said area for independence is at least indicative of
2 the spontaneity of other original movements therefor.

3 (b) Next, as to the Sino-Japanese Incident,
4 the Central Government of China professed desire to
5 regain, by fair means or foul, certain national rights
6 with respect to which Japan by treaty was entitled to
7 exercise certain privileges. Did such action contribute
8 to this incident? Was further aggravation and spread
9 not due to the program which was anti-Japanese? Did
10 not such anti-foreign programs lead to destroying
11 Japanese lives and property in an effort to drive out
12 of China all Japanese interests and Japanese people
13 before such hostilities broke out, even previous to
14 1931 and 1927?

1 Tension had increased between these countries
2 as a result of a number of Japanese being murdered and
3 Japanese properties being plundered or destroyed.
4 Evidence adduced before the Tribunal shows that the
5 incident developed and extended because of continued
6 activity by Chinese forces and groups.

7 During the period KOISO believed that the
8 fundamental national policy of Japan was pacifism
9 aimed at the maintenance of peace in the Orient. Is
10 a citizen to doubt or can he be justified in placing
11 reliance on the statements made by his government which
12 evidenced such intentions to preserve world peace?
13 Does the prosecution wish to establish that a citizen
14 cannot depend on his own government's assurances?
15 Should we establish that as a precedent? Shall an
16 accused be held responsible for the actions of those
17 in official positions unless said accused regardless
18 of his own official position makes a record of his
19 opposition and preserves it for perpetuity or at least
20 20 years to use for his defense?

21 The Chinese Communists have become known
22 for their intrigues and their skill in disseminating
23 propaganda. Japan was always defeated by such Chinese
24 in the war of propaganda and, as a result, many of the
25 peoples of the world have been taken in by Chinese

1 Communistic propaganda and overlooked many of their
2 activities violating the legal rights of Japan and of
3 its citizens. Of course, there were other reasons which
4 added to the difficulty, but many of which grew out of
5 this oversight led eventually to hostilities between
6 Japan and the Allied Powers; some were also dealt with
7 in general summations that were of an ultra-nationalistic
8 background, but these were also encouraged by Chinese
9 Communists, and we submit both Chinese groups fighting
10 today for control, thought by uniting against Japanese
11 interests they would not only gain what Japan would
12 lose but would possibly each have an opportunity to
13 wrest control of China from the other in said process
14 or gain weapons and assistance from other allies.

15 (c) Does the evidence not fail to prove
16 common conspiracy or aggressive intentions on the part
17 of KOISO?

18 The Tribunal is aware, there was a clear
19 demarcation between general state affairs and those of
20 the High Command according to the provisions of the
21 Japanese Constitution.

22 Could those who had a strong political position
23 direct and administer the entire national power in
24 any way and manner they desired?

25 Was it actually impossible to control Japan's

1 national and foreign policies, to lead the national
2 policy at will and to disregard the national interests
3 and the welfare of the people? Every individual
4 cabinet officer by failing to vote in favor of a
5 measure could defeat it at least temporarily or cause
6 the downfall of the cabinet by refusing to either
7 approve or individually resign; action opposing the
8 trend to alliance and war continuation was taken by
9 KOISO and YONAI with others who were inclined for
10 peace on at least two occasions of record in their
11 two cabinets. (T. 41,326, T. 31,248).

12 Officers and men of military service are the
13 ones first to suffer in carrying out the orders of
14 their governments, and it is such officers and men who
15 should be and generally are the greatest advocates of
16 peace for they have a close appreciation of the
17 horrors of war. KOISO and YONAI were labelled as
18 peace advocates. The Senior Statesman especially
19 (T. 31,134) stated this critically, of the efforts
20 to end hostilities and establish peace, of KOISO and
21 YONAI in 1945. (EE-133, Ex. 1282, T. 11,390, Ex. 3340,
22 T. 31,124, 31,134). KOISO's efforts to restore peace
23 in the Pacific War, to prevent the spread of the
24 Manchurian Incident and rash action by the Kwantung
25 Army when it was tense under the strain of many incidents

1 which occurred in China, his oppositions to the Tri-
2 partite Alliance in both the HIRANUMA and YONAI
3 Cabinets does indicate that he was not at any time
4 motivated by aggressive intent, or design to conspire
5 to cause hostilities and is testified to by Major
6 General Piggott (T. 32,546) and others.

7 The Allied Forces carried out unlimited and
8 indiscriminate bombing not only in the battlefield
9 but also over the territories of Japan, as the result
10 of which the war damage suffered, as the Tribunal is
11 well aware, was exceedingly serious. After the
12 nation had been led into war and the TOJO Cabinet
13 fell, KOISO was ordered by his Emperor to form a
14 government to protect Japanese interests. Does this
15 taking of office as Premier label KOISO as a member
16 of a militaristic clique? He was not even qualified
17 to become War Minister for he was no longer in active
18 service. Was it illegal and improper? If so, in
19 event of another war, who will be inclined to take up
20 matters of state and try to terminate hostilities?

22 Japan was in a position in which she was to
23 suffer complete annihilation, as the Allies had broad-
24 cast, unless she quickly took steps for peace or found
25 further arms for her defense. Some statesmen had to
~~be selected to lead Japan back to her former more~~

1 peaceful position. KOISO and YONAI set up the joint
2 cabinet and did their best under difficult circum-
3 stances. YONAI as joint Premier and Navy Minister
4 and a former Premier of the YONAI Cabinet was not
5 indicted, so we presume and submit that the position
6 he held should not make KOISO automatically responsible
7 for the conduct of others who had led the nation into
8 war, and we feel the prosecution had failed to grasp
9 the facts about KOISO and YONAI because they had been
10 misled by the mistranslations and vicious rumors about
11 KOISO and the March Incident (K-3, T. 40,539).

12
13 SECTION 9 - RELATING TO COUNT 1, COUNTS 44,
14 48 to 51, and 53 to 55 - EDUCATION, MURDER
15 PRISONERS OF WAR.

16 (1) The prosecution dropped Counts 44 and
17 53 at paragraph C-18 of their summation. Now as to
18 the other counts of the Indictment under Groups 2,
19 Murder, we find KOISO is only named in Counts 48, 49,
20 50 and 51. As to the Republic of China and the region
21 of the Khalkhin-Gol River we have already made our
22 submission thereon under Section 3 and 7 above, re-
23 spectively, relating to the Republic of China and the
24 Union of Soviet Socialist Republics, and we submit
25 the prosecution have failed to show any connection

1 of the accused with such charges.

2 (2) As to the remaining counts of the
3 Indictment under Group 3, conventional war crimes:
4 KOISO was charged in Counts 54 and 55, together with
5 all the other defendants.

6 Of the matters mentioned in said counts,
7 our refutation has been by KOISO's testimony
8 (T. 32,246) and TANAKA's testimony (T. 32,544) to
9 the effect that KOISO never ordered, authorized or
10 permitted anyone to commit any illegal act and he
11 had no knowledge as to or responsibility over alleged
12 violations of the laws of war nor legal duty in regard
13 thereto.

14 (a) The "notification on dealing with
15 prisoners of war" from the Vice Minister of War to
16 the Chief of Staff of the Taiwan Army Headquarters
17 under date of March 17, 1945 (Ex. 2012 and 2013) and
18 the "Notification Concerning Work of Prisoners of war"
19 from the War Ministry to the Chief of Staff of the
20 Taiwan Army Headquarters under date of March 16, 1945
21 (Ex. 2014), were documents, relating to prisoners of
22 war, intended to be used exclusively within Army
23 circles. TOJO, who as a former War Minister should
24 know, admitted that these documents had nothing to do
25 with the cabinet (T. 36,839) and they were matters

1 dealing with questions on which the Premier was not
2 in a position to receive any report. (KOISO, T. 32,246)
3 Foreign Minister SHIGEMITSU also did not discuss
4 prisoners of war matters with KOISO as was testified
5 by SUZUKI (T. 38,914), and TANAKA (T. 32,544). The
6 prosecution admit this in paragraph SS-33 (b) of their
7 summation.

8 (b) Of the 13 letters (Ex. 2016-A) exchanged
9 between the Swiss Minister and the Japanese Foreign
10 Minister with respect to visits to prisoners of war,
11 etc., which bore a date while KOISO was Prime Minister,
12 five were dealt with by the Foreign Minister before
13 the cabinet resigned. However, no report was made
14 on these matters to the Prime Minister by the Foreign
15 Office. (TANAKA, T. 32,544) (SUZUKI, T. 38,914)

16 (c) As to 8 documents (Ex. 2022-A) relating
17 to mistreatment of prisoners of war or protests ex-
18 changed between the Japanese Foreign Minister and the
19 Swiss Minister which were received during the time
20 KOISO was Prime Minister, the Foreign Minister before
21 the Cabinet resigned had answered or made report on
22 four of them. However no report was made on these
23 matters to the Cabinet by the Foreign Office (TANAKA,
24 T. 32,544), or to Premier KOISO (T. 38,914).
25

(d) Prisoner of war matters (LL-52 to 56)

1 were in charge of the Minister of War who had a section
2 to handle such matters through the Channels of Command.
3 This was made clear by TOJO (T. 36,819), KOISO
4 (T. 32,246), TANAKA (T. 32,543) and the explanation
5 of Prosecutor Nolan concerning the administration of
6 prisoners of war. (T. 594 to 597) All of which clearly
7 show that these were matters outside the responsibility
8 of the Prime Minister (T. 14,440).

9 (e) The protest and demand for a reply sent
10 to the Japanese Foreign Minister by the Swiss Minister
11 (Ex. 2092) on June 5, 1944, with regard to illegal
12 attacks on British merchant ships by torpedoes of
13 Japanese submarines had nothing to do with KOISO as
14 it took place before he became Prime Minister, and
15 while he was still Governor-General of Korea. More-
16 over, open submarine warfare had been declared by the
17 Allied governments as is a matter of common knowledge
18 and this was declared by the Nuernberg court to estop
19 any action on charges related thereto. Furthermore,
20 KOISO had no knowledge thereof (T. 32,544, 38,914).

21 (f) Furthermore, with respect to illegal
22 attacks by Japanese submarines these were matters
23 coming under the exclusive control of the High
24 Command.
25

D
u
d
a
&
S
J
r
a
t
t

(g) Finally, the prosecution alleges that "Matters concerning atrocities and mistreatment of prisoners of war by Japanese authorities were well known to the public." Before KOISO was appointed Prime Minister, however, KOISO was Governor-General of KOREA (May 1942 to July 1944) and was at Keijo (Seoul), Korea, engaged with administrative duties, and KOISO testified he did not know of such facts as alleged. (T. 32247). At that time, the Japanese Government had prohibited both officials and civilians from possessing or using short-wave radio sets. Therefore, except for the very few authorized officials dealing with such matters no one else had an opportunity to learn of such matters because of such rigid censorship. It was more than natural, therefore, as KOISO testified (T. 32247) that he did not know or even suspect as to the true condition of prisoners of war in Japan, still less so of those in places outside of Japan. TANAKA, Ryukichi's testimony and that by SUZUKI, Tadakatsu clearly shows that the treatment and supply of food, etc. to prisoners of war were handled, even after KOISO became Prime Minister, by the sections under the War Minister or by the High Command and protests and requests by foreign countries were forwarded by the Foreign Office directly to the

1 Bureaus or Sections concerned for action. (SUZUKI,
2 T. 12831 and 38914); (TANAKA, T. 14286 to 14287).

3 It is further stated that the question relating to
4 the treatment of prisoners of war was never put
5 before the Cabinet and no report whatever was re-
6 ceived by KOISO on any other occasion as well.

7 (TANAKA, T. 32544); (KOISO, T. 32246); SUZUKI, T.
8 38914). Par. SS-33 (b)).

9 (3) We submit KOISO is not amenable in any
10 way to the evidence produced against him under Counts
11 44 to 51 and 53 to 55 of the Indictment.

12 (4) The prosecution, under paragraph LL-42
13 of their summation, state that "It was while KOISO
14 was Governor General of KOREA (29 May 1942 to 22 July
15 1944) that British POW arrived in Korea on 13 August
16 1942, and were publicly paraded and degraded (T.
17 14522) although he was not Governor General when this
18 matter was arranged. . ." The treatment of prisoners
19 of war at that time was entirely under the control of
20 the Commander in Chief of the Korean Army and the
21 Governor General of Korea had no relations with them
22 at all, which fact was made clear by the testimony of
23 MINAMI (T. 20021) and ONO (T. 32920). Furthermore,
24 the responsibility for treatment of prisoners of war
25 in Korea was not in the government but was in the army

1 General Staff, which fact was made clear by the testi-
2 mony of witness TOJO (T. 36839).

3 (5) Relating to Count 1, Appendix A, Section
4 6):

5 In Appendix A, Section 6 of the Indictment,
6 the last paragraph states the educational system,
7 civil, military and naval, were used to inculcate a
8 spirit of totalitarianism, aggression, desire for war,
9 cruelty and hatred of potential enemies. The Chief
10 Prosecutor, in his opening statement (T. 436) stated
11 as follows: "The military in Japan had sponsored,
12 organized and put into effect in the public school
13 system of Japan a program designed to instill mili-
14 taristic spirit in the youth of Japan."

15 However, there is no evidence connecting
16 KOISO with any such alleged program of education or
17 with conspiring with anyone else to carry out such
18 a program. A natural result of evidence presented
19 in this case leads one to feel there was much to be
20 desired in the proper guidance of young men. In
21 other words, this education system or some other system
22 may have had shortcomings. However, in the case of
23 the education system of the allies based on democracy
24 does that also explain the improper actions of certain
25 young men in their armies of which we are all aware.

1 We submit that it does not in either case. Certain
2 crimes occur even in peace time and certain people
3 have criminal tendencies which become more pronounced
4 as the restraining influence of the police power be-
5 comes unstable or unlikely of being able to detect
6 their irregularities. However, many people fail to
7 realize that actions in the theatre of war make more
8 pronounced such abnormal behavior because of the
9 breakdown of the normal safeguards. Therefore, crime
10 will prevail wherever there are armies of men and the
11 education system we submit does not affect this
12 condition enough to prevent improper actions by
13 citizens of any country. The prosecution, under the
14 misapprehension that an education system could be
15 solely responsible for instilling militaristic and
16 aggressive teachings in the mind of Japanese, repeatedly
17 charged that said system caused aggression in Man-
18 churia, in China and other areas, and cruelty, atroci-
19 ties and hatred of potential enemies and contended as
20 if Japan had committed unlawful acts due to ultra-
21 nationalistic education even though educational reforms
22 were not instituted very markedly in a military sense
23 until TOJO's time in 1940. However, on the basis
24 of their presumption, they charge that the defendants
25 were guilty of a common conspiracy and liable therefore

1 for the acts of other accused, most of whom were
2 strangers to each other. We have been told quite
3 correctly several times during the proceedings of
4 this court that because other countries or people com-
5 mitted certain alleged unlawful acts does not permit
6 Japan to repeat the same offense. However, in inter-
7 national affairs we find at a glance at the foreign
8 policies of various countries they all relate to the
9 actions of other nations whether lawful or unlawful
10 which is sufficient to shew that we must also con-
11 sider as background the actions of countries in
12 Europe and in the Far East. The invasion of Asia
13 by European countries and its influence; the dangers
14 to the peace in the Far East which were not apparent
15 to all the peoples of the world at the time were
16 apparent to or believed to be a danger by many Japanese
17 statesmen twenty years ago. The prosecution slide over
18 these points and do not seem to realize it took two or
19 more to make a quarrel and condemned as mere propa-
20 ganda or as suspicions that which was based on
21 evidence that a quarrel was being provoked with Japan
22 by opponents who violated the provisions of treaties
23 and that normal relationships became strained or
24 broken off with no diplomatic reasons justifying such
25 comfort, from the viewpoint of the statesmen at that

time.

1 Can the educational system be blamed for
2 the actions taken by Japan declared to be irregular
3 and can her statesmen be tried without first consider-
4 ing whether their motives were improper and the extent
5 to which the actions of other countries were justified
6 and their motives be revealed for taking certain
7 provocative actions? Many past actions though now
8 easily understood in light of later developments were
9 at the time not clear and were very complex and diffi-
10 cult of solution. Of course hindsight is better than
11 foresight and looking back many matters presumed to
12 exist as dangers or plots which are now inferred from
13 a certain pattern of events may not be based on fact
14 at all but upon suspicion or presumption alone. At
15 the time good faith may well have been present on
16 both sides, even though errors of judgment and dif-
17 ferences as to methods of solution occurred.

18 Could it not be other countries were sus-
19 pected of poisoning the mind of their people with
20 harmful ideas of racial superiority that created this
21 danger to the peace of the Orient? There was just as
22 logical and reasonable a pattern if one is fair in
23 looking backward at history for fearing both the
24 Imperialism of capitalism and of Communism and for
25

believing it reasonable to commence building a defense against it, and the bloc economies, racial prejudices and ideologies of that time. This is not a matter which is unreasonable or beyond the power of comprehension or discernment of only Japanese. We respectfully submit to the fair consideration of the honorable members of this Tribunal much evidence and the chain of past activities favored these fears and conclusions which appeared reasonable and logical to leaders in Japan at that time, who from fear and suspicion prepared to meet such dangers, real or fancied.

The prosecution at transcript pages 459-460 stated as follows: "It is no longer a theory but a fact, as has been so well demonstrated by recent scientific developments, that another war will mean the end of civilization, the destruction of civilization." We submit civilization without justice would be a paradox. The prosecution further state: "To those who observe and note these proceedings, we can say only we shall proceed without thought of criticism or commendation. That is that our proceedings shall be in full conformity with the dictates of justice itself."

We submit the safety and security of posterity demands that the above procedure be practiced and is a

1 policy taught in legal institutions of learning of all
2 nations. Indeed, another war in the future may not be
3 such a simple affair as the destruction of civiliza-
4 tion. The use of atomic power in war will not be the
5 only danger, for a more dreadful paradox may appear
6 in the future, because the prosecution without thought
7 of criticism or commendation ask this Tribunal to
8 exercise the power to legislate under certain theories
9 of interpretation, to hold under new theories of law
10 certain defendants responsible for certain alleged
11 crimes, in order to establish certain precedents.
12 The prosecution contention advocates justice, but
13 hearsay evidence rules and technical objections
14 and technical mechanical advantages and disadvantages
15 faced herein carry all the known dangers and preju-
16 dices to orderly administration of justice that have
17 been pointed out in schools of law for years. The
18 accused has been arraigned for trial accused of alleged
19 crimes and responsibilities under theories of law that
20 cannot be found under any legal or educational system
21 of any nation of the world, let alone as a violation
22 of an international criminal code which should be a
23 basic necessity for complete compliance with justice.
24 We are asked to step back in the international field
25 still further into the dark ages of law and learning

1 when ex post facto law and rule by force, rather than
2 by reason, caused untold misery and suffering for
3 centuries. Are we to lose the progress of education
4 and justice in the international field and thereby
5 weaken even the greater progress of our domestic con-
6 cept of justice, merely to set precedents that may be
7 illogical and unreasonable since they are by reason of
8 neglect, not clearly defined, studied and codified
9 into necessary and proper international laws, but
10 result from the hasty actions of academicians. If
11 the prosecution contention is supported and verdict
12 given accordingly, it might mean to many nations of
13 the world that war in the future must be won without
14 regard to its method. Is the right and manner of
15 imposing new theories of justice, etc. to be left to
16 rest in each new case with the victor alone? This
17 could lend to the destruction of entire races, groups
18 or classes of people and instead of this trial being
19 a war deterrent, such precedents as set here might
20 incite even greater horrors of war and later be used
21 to justify action based on similarly created precedents
22 by a victorious nation aroused by the passion and
23 prejudice of war. Thus a trial whose purpose is to
24 prevent wars may become a notice to encourage more
25 horrible wars contrary to its role. The saying of

1 a wise philosopher that man is a political animal and
2 a warlike animal may be further strengthened. History
3 teaches there is no assurance when the nations and
4 races that are now victor nations may not find them-
5 selves later in a defeated or most pitiable condition.
6 For these reasons not only are justice and fairness
7 necessary but solemn deliberation, confiscation and
8 permanent rules and machinery are necessary before
9 setting such legal precedents. The members of this
10 Tribunal who represent the allied nations in these
11 temporary proceedings are in a position to be able
12 to save the world from another war by recognizing
13 fairly the mistakes of all parties concerned and the
14 true weakness of its legal background and conception
15 and point out the necessity for world peace to be
16 established firmly by a known codified body of inter-
17 national law adopted, ratified and made effective in
18 customary form under rules of justice and under pre-
19 scribed forms of practice and procedure universally
20 recognized and adopted as just by their acceptance
21 and use in national systems of jurisprudence. It will
22 be most fortunate, we hear diplomats, military leaders
23 and officials of government state, if the action of
24 this Tribunal does not lead to improper and dangerous
25 precedents being established to hound and damage

innocent people in the future. If we make such
1 persons feel insecure in carrying out their duties,
2 overly careful of personal responsibility, the inde-
3 cision and vacillation or relinquishment of positions
4 will be detrimental to sound government. Japan's
5 continental policy and the actions taken by certain
6 defendants may have awakened the world to the need for
7 laying the proper foundation for settlement of world
8 problems; for prevention of all wars; for the emanci-
9 pation of and granting equal rights to all races; for
10 providing proper attention to world economic coopera-
11 tion; and for preventing economic insecurity by pro-
12 viding protection from the "grab mores" and allaying
13 suspicion due to lack of understanding or lack of
14 sympathy with the problems of the "have nots" from
15 causing war in the future. We submit, therefore, that
16 all educational systems may have failed to teach and
17 realize from the lessons of history the dangers from
18 unbribled imperialism, and oppression of races because
19 of color, creed, prejudice or a desire to exploit
20 rights and resources needed without considering legal
21 and ethical rights and necessities of the possessors
22 thereof.
23

24 War will only be prevented, we submit, not
25 by a temporary court's decision, but only when all

1 wars are outlawed, civil, aggressive or defensive, and
2 all killing in active combat be by statute, national
3 and international defined as murder. Only progressive
4 legislation, both national and international, outlawing,
5 progressively, the use, manufacture or possession of
6 weapons of war and prohibiting organizing and training
7 of military personnel as criminal, will end such
8 hostilities. Then if these actions are criminal, by
9 such criminal statutes, said crimes can be prevented
10 by proper supervision of the regular police systems
11 in each nation carrying out their duties to uphold
12 both national and international law, the fulfillment of
13 their duties being insured by an international police
14 commission authorized to maintain police inspectors
15 representing all nations in any area of the world.
16 Then with such proper permanent machinery and properly
17 established permanent courts for dispensing interna-
18 tional justice it will be safe to establish legal
19 precedents based on studied and internationally ap-
20 proved laws and regulations for ensuring world peace,
21 freedom, security and prosperity to an enlightened
22 world. Then we will be free from the terrible expense
23 and dangers from maintaining military forces and
24 equipment. Then no foreign ideology can be forced on
25 an unwilling people, but acceptance will depend on

1 proven merit consistent with the needs, desires, social
2 and political factors of the people in a given area of
3 the world.

4 We submit, your Honors, that if the need for
5 permanent international machinery and a clearly pub-
6 lished code of international criminal law and procedure
7 can be pointed out to the world it may arouse states-
8 men from their lethargy and alone justify the time and
9 expense of these proceedings. The findings of not
10 guilty based on lack of adequate legal jurisdiction
11 may point the way to the proper legal steps to follow.

12 THE PRESIDENT: Captain Brooks, this is a
13 political harangue, not a legal argument. You know
14 that we cannot entertain such things as you are putting
15 to us. We must decide our jurisdiction according to
16 law, international law.

17 However, proceed. I just want to point out
18 that we realize that you are exceeding all proper
19 bounds in this summation.

20 MR. BROOKS: I am attempting to meet the argu-
21 ment of the prosecution that this Court should act
22 upon and set certain legal precedents, and pointing
23 out that there is not the proper international law, as
24 we have argued in our arguments on legal jurisdiction,
25 which I will come to very shortly in the argument.

1 (6) We argued, in our motion to dismiss the
2 various counts of the Indictment against KOISO, that
3 the evidence offered by the prosecution is not suffi-
4 cient to warrant a conviction (T. 16,415 to 16,443).

5 We submit that the evidence of the defendant
6 has confirmed our contentions in his behalf.

7 We state that to determine whether a crime has
8 been committed, it must be established:

9 1. That an act was committed which was suffi-
10 cient to constitute a crime objectively, i.e., having
11 the objective elements of a crime.

12 2. That the accused had the intention or know-
13 ledge of committing said crime, subjectively, i.e., he
14 must have committed the act with the knowledge of facts
15 or subjective elements, that they would rightly consti-
16 tute the said crime, and we submit that the prosecution
17 has failed to prove that KOISO committed any act which
18 constituted a crime objectively or that he had guilty
19 knowledge that any act he committed was wrong, or that
20 he committed any act with knowledge subjectively that
21 it constituted a crime.

22 We submit it is necessary for the prosecution
23 in order to establish crimes against peace to prove
24 that planning and preparation of a war was carried out
25 with subjective knowledge or intention to initiate or

1 wage a war of aggression or a war in violation of
2 international law, treaties, agreements or assurances,
3 or a war must have been initiated and waged with the
4 knowledge that the war was an aggressive war or a war
5 in violation of international law, treaties, agreements
6 or assurances.

7 A crime against peace cannot be said to have
8 been committed where one's actions were without the
9 foregoing knowledge and where the prosecution's evi-
10 dence points to an emergency situation or to a pre-
11 vailing international situation that caused the initia-
12 tion of measures for self-defense; or where the accused
13 came into a responsible position without the foregoing
14 knowledge or intention and carried out the duties of
15 his office as a patriotic citizen of his country in
16 what he believed to be a war for survival.

17 All wars are not criminal, and the burden of
18 proof is on the prosecution to show the accused had
19 knowledge that the said war was one of aggression or
20 in violation of international law, treaties, agreements
21 or assurances, and that the accused did not rely on
22 official statements that his government was exercising
23 its exclusive, sovereign prerogative to institute and
24 carry out measures on the basis of self-defense.
25

Since the causes of a war are complicated and

1 divergent, it is difficult for anyone other than the
2 sovereign nation itself to analyze what action is a
3 measure of self-defense and even the governing body of
4 a country may be wrong in its judgment and decision and
5 statement, due to omissions in its information or mis-
6 information, or misunderstanding when coupled with
7 the difficulty of understanding and analyzing the real
8 situation prevailing inside an opposing country,
9 especially when the relations of countries are strained
10 and the sentiment, passion and pride of the people is
11 aroused.

12 Therefore, assuming it was clear after peace
13 has been restored and abundant revealing information has
14 been collected from the various countries concerned
15 that in the light of difficult and profound theory of
16 international law, treaties, agreements and assurances,
17 a war has been waged that was illegal or aggressive,
18 these facts alone do not establish that the officials
19 of the country concerned were cognizant that said war
20 was or would be considered illegal or aggressive. The
21 prosecution must show by facts and evidence that at the
22 outset and at the time thereof this accused had such
23 guilty knowledge beyond a reasonable doubt which they
24 have failed to do.
25

Since international law, treaties, agreements

or assurances require highly technical knowledge in
1 relation to the interpretation thereof, together with
2 the circumstances enumerated above, it becomes impos-
3 sible for an individual or the general public to form
4 an independent judgment as to the legality of a war
5 and they are compelled to listen and depend naturally
6 upon government announcements and opinions of other men
7 of authority and as in the case of an interpretation of
8 the reservation of the right for the use of self-
9 defense mentioned in the Kellogg-Briand Pact since a
10 clear and concise definition has not been reached by
11 international agreement and proclamation, the exclu-
12 sive determination and interpretation thereof is an
13 individual sovereign right of each nation.
14

15 When we consider the above-stated points, we
16 readily understand why in the Nuernberg judgment they
17 did not find guilty of crimes against peace any defen-
18 dant who failed to attend those important conferences
19 at which Hitler confidentially expressed his aggressive
20 intention and only where the prosecution proved beyond
21 a reasonable doubt that those in this small inner circle
22 had guilty knowledge and intention to act, to carry out
23 Hitler's aggressive war plans, did the court impose
24 penalty.
25

 We submit that the finding of the Nuernberg

trial in relation to the "General Staff and High Command" reaffirmed the principle that the simple fact that an accused occupied a certain important position at the time when a certain incident broke out does not establish that said accused is guilty of a crime against peace and a sharp distinction was made between this and a criminal organization such as the Nazi party of Germany. Here, the cabinet, the Ministry of War, other ministries, the General Staff Office and the Kwantung Army Headquarters have not been shown by the prosecution to be criminal organizations, and the occupation of a position thereon does not establish the fact that the defendant was guilty of a crime against peace.

If the prosecution has established that a certain criminal act occurred in which several persons participated, we submit that only those members of said joint action can be held responsible for the crime who had guilty knowledge that said act was a crime, or whose official acts were carried out with knowledge and intention to aid and assist or conspire to commit said crime. (Otherwise, we overthrow the principle of law that in the case where a nurse prepares medicine and administers it in accordance with a doctor's prescription in good faith, or in the case where the doctor who, without knowing the patient's abnormal

1 constitution, prescribed for him properly, neither
2 nurse nor doctor can be charged with murder even though
3 the patient dies as a result of taking the medicine.)

4 Moreover, in the ordinary criminal offense,
5 the actual relations or objective elements of the crime
6 are not very complicated, and belong in principle to
7 illegal acts; therefore, those who brought about facts
8 or objective elements which constitute the crime can
9 generally be presumed to have had knowledge that their
10 acts were criminal but this theory is only followed
11 where the burden of proof rests with the defendant who
12 contends his innocence.

13 In the case of a war the actual relations as
14 previously stated are not only complicated and divergent
15 but if there is a presumption it would be that a war
16 is not illegal. Therefore, except in a special instance
17 where a defendant is a member of an organization which
18 has been declared by a court of justice to be criminal
19 the burden of proof regarding a malicious intention or
20 guilty knowledge is on the prosecution and has not been
21 established by the evidence presented against the defen-
22 dant KOISO.

23 Mere knowledge by a defendant that following
24 a war or an act of hostility a change is brought about
25 in the territorial sovereignty of a certain area does

not establish that said war or act of hostility was one
1 of aggression or was intended to be one of aggression.
2 For example, during World War I, the Allied Powers
3 occupied certain territories and countries, and, after
4 the war, made a part of them either their own territory,
5 or acquired same as mandated territory. No one by
6 reason thereof would accuse such countries of having
7 or of having considered this change as being interpreted
8 as being aggressive, or contemplated as such either
9 during the waging of the war or thereafter.
10

11 We submit that simple declarations in newspapers,
12 or marshalling of various policies alone are far from
13 sufficient to establish that a plan for an aggressive
14 war existed. The Nuernberg finding clearly stated this
15 point:

16 "But in the opinion of the Tribunal, the
17 conspiracy must be clearly outlined in its criminal
18 purpose. It must not be too far removed from the time
19 of decision and of action. The planning, to be criminal
20 must not rest merely on the declaration of a party
21 program, such as are found in the 25 points of the Nazi
22 party, announced in 1920 or the political affirmation
23 expressed in 'Mein Kampf' in later years. The Tribunal
24 must examine whether a concrete plan to wage war existed
25 and determine the participants in that concrete plan."

We further submit, that to be a participant,
1 guilty knowledge must be proven by the prosecution to
2 have existed on the part of the accused and to have
3 governed his actions.

4 In examining various counts under Group I,
5 Crimes Against Peace, we find their constitution
6 extremely complicated and hard to comprehend, and
7 that no clear charge with sufficient connecting and
8 supporting evidence has been established against the
9 defendant KOISO, and we submit that KOISO had no con-
10 nection with the crimes charged, even if such a general
11 and abstract conspiracy as charged by the prosecution
12 existed. We further submit that such a charge by the
13 prosecution under count I cannot be said to constitute
14 a crime against peace as set forth by Article 5a of
15 the Charter of the Tribunal in light of the Nuernberg
16 decision above quoted. (The prosecution has failed
17 to show that KOISO conspired with the defendants or
18 other divers persons. The prosecution's evidence
19 (Ex. 1278) shows KOISO was not intimately known by
20 other accused and members of the government, and was
21 considered by the army circle to belong to a neutral
22 faction, and by government officials he was described
23 as a just, moderate and moral character, possessed of
24 a well-developed common sense. The prosecution has
25

failed to show that KOISO was member of either the Min-
seito or Seiyukai political parties, or active in any
1 other political group or factions. The prosecution's
2 evidence establishes that the so-called March Incident
3 and October Incident of 1931 were domestic political
4 issues due to the corruption of domestic administration
5 and aimed at internal reform, and that there was no
6 relation between these incidents and any war or plan
7 for war, as was testified to by witnesses SHIMIZU,
8 Kenosuke; TOKUGAWA, Yoshichika; and UGAKI, Kazushige,
9 during cross-examination on 26 June and 1 July 1946.
10 (T. 1404-1410, 1411, 1418, 1419, 1626 and 1627.)
11

12 This testimony clearly shows that the defen-
13 dant KOISO was not a participant but that KOISO, by
14 order of his superior, prevented the carrying out of
15 these incidents and caused the firecrackers to be used
16 in the demonstration to be confiscated.

17 Court exhibits 179-C and F, excerpts from KIDO's
18 diary, we submit are not reliable as they were based
19 on hearsay received by KIDO from HARADA. Since HARADA
20 was not a participant in either preventing or planning
21 the incident his information could only be based on
22 rumors unfounded on facts, many of which were circu-
23 lating in political circles. The previous paragraph
24 also explains why KOISO was kept at a respectful
25

distance by extremist political factions. Furthermore,
1 UGAKI, the War Minister in the Minseito Cabinet which
2 was then in power, could not conceivably be expected
3 to discuss a scheme for overthrowing the cabinet with
4 Mr. MORI, a leader of the Seiyukai, an opposition party.
5 (T. 1626-27.)
6

7 On the Manchurian Incident, the prosecution's
8 evidence fails to prove that KOISO in any of the posi-
9 tions of government occupied (Ex. 114) was in a posi-
10 tion of authority or responsibility, or was connected
11 in any illegal or criminal activity or conspiracy.

12 The prosecution's evidence presented by the
13 witness SHIDEHARA, Kijuro, Minister of Foreign Affairs
14 at the time of the incident (T. 1385), and the testi-
15 mony of WAKATSUKI, Reijiro, Prime Minister (T. 1571)
16 discloses that the defendant MINAMI, Minister of War,
17 supported SHIDEHARA's policy for localization of the
18 incident and assisted in carrying out this policy.
19 KOISO, Chief of Military Affairs Bureau under MINAMI
20 (Ex. 162), also acting under War Minister MINAMI's
21 order carried out his duties in conformity with the
22 SHIDEHARA policy, and the prosecution's evidence does
23 not show any illegal or criminal activity in KOISO's
24 exercise of the functions and duties of his office.
25

Later, on the formation, in December 1931, of

the INUKAI Cabinet in place of the WAKATSUKI Cabinet,
1 KOISO, first in the capacity of Chief of Military Affairs
2 Bureau as theretofore, and also later as Vice-Minister
3 of War, had administrative authority and responsibility
4 that was very limited. (T. 14,397, 14,405 and 14,406.)

5 On 8 August 1932 KOISO was appointed Chief of
6 Staff of Kwantung Army under Field Marshal MUTO,
7 Commander-in-Chief of Kwantung Army, where he executed
8 his administrative duties in conformity with the orders
9 of the Commander-in-Chief (T. 2075-2076 and 2101-2102)
10 and in the belief that the administrative duties
11 assigned to him were in conjunction with the subjugation
12 of bandits, the maintenance and restoration of peace
13 and order, and for the protection of Japanese and
14 Korean residents and property rights under the Japanese
15 Government's previous steps taken in the exercise of
16 its sovereign right of self-defense, which was generally
17 accepted on the basis of the report of investigation
18 testified to by witnesses. (SHIDEHARA, T. 1338; WAKAT-
19 SUKI, T. 1573 and TANAKA, T. 2087-8.)) We submit
20 defendant KOISO had no means or facilities of his own
21 to inquire into the state of affairs, and was dependent
22 on the announcements made by the Japanese Government,
23 the same as the above witnesses have stated they were
24 so dependent, and the prosecution's evidence fails to
25

1 establish that defendant KOISO had guilty knowledge
2 that said incident was or would be considered an
3 aggressive act as alleged (K-3, T. 40,539).
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25

L
e
f
f
e
r
&
W
o
l
f

Although KOISO was Minister of Overseas
1 Affairs in the HIRANUMA Cabinet from 7 April to
2 30 August 1939 and in the YONAI Cabinet from 16
3 January to 22 July 1940 and Prime Minister from 22
4 July 1944 to 7 April 1945, there is no evidence
5 connecting KOISO, or proving he participated, or had
6 any responsibility for the military actions that
7 occurred, or were being carried on during said periods
8 of occupying said government posts. The KONOYE
9 Cabinet having adopted a policy of not enlarging
10 the said conflict, negotiated with the Chinese in
11 the hope of coming to a solution, but failed and
12 succeeding cabinets failed in their efforts. (T. 31,242-
13 8)
14

15 The military action necessitated by the
16 conflict was solely in the prerogative of the Chief
17 of the General Staff, and the cabinet had no authority
18 therein as shown by prosecution evidence. (UGAKI, T. 1620)
19 (SHIDEHARA, T. 1389-1392) and Ex. 179-L). Furthermore,
20 the Japanese Government having publicly declared that
21 the outbreak of the China Incident originated in
22 self-defensive action taken to protect Japanese
23 residents and property rights and against provocative
24 Chinese acts resulting from anti-Japanese propaganda,
25 it was natural that KOISO not having at his disposal

1 any organization or means to personally investigate
2 such matters, should give full credence to the
3 declaration of the government, and there is no
4 evidence which indicates that the defendant was
5 cognizant, that the Chinese Incident and the actions
6 taken therein was or would be considered unlawful
7 or illegal as alleged and the evidence does not show
8 that he conspired or participated in any manner as
9 charged or that his action in the exercise of his
10 duties and responsibilities in any government position
11 was unlawful or illegal, or done with guilty knowledge
12 or malicious intent to conduct or assist in any
13 unlawful act.

14 (7) We respectfully request the Tribunal
15 to reconsider the legal arguments in certain motions
16 we have presented as to jurisdiction, especially the
17 motion dealing with the remoteness of the Manchurian
18 Incident to the subject matter under consideration
19 at the signing of the Potsdam Declaration and
20 Instrument of Surrender, and that said Charter and
21 Indictment have no legal basis to confer on the Court
22 jurisdiction over any matter so remote to the subject
23 of such deliberations as the pacific war.

24 We now proceed to Section 10, our concluding
25 argument.

SECTION 10 -- CONCLUDING ARGUMENT

1 In considering how KOISO thought, and how
2 he acted in the handling of matters in the light of
3 various situations at home and abroad, during the
4 period 1928 to 1945, covered by the Indictment, we
5 have seen that nationally he endeavored to preserve
6 tranquility in every degree by legal means, and at
7 the same time, to bring about an orderly adjustment of
8 domestic conditions by means of moderate processes,
9 and that internationally he considered it essential
10 to bring about friendship with China on a thoroughly
11 sound basis, and to avoid any conflict with the
12 United States, Great Britain and the Soviet Union.
13 For these purposes, he restrained the young Army
14 officers and thwarted the reckless designs of civilians
15 who schemed to tempt these young officers into partic-
16 ipation in their plans, and disposed of articles
17 which might be the source of harm in the future. In
18 view of the disquieting conditions in a neighboring
19 country, he counselled prudence to his superiors;
20 after the outbreak of the Manchurian Incident he
21 labored to realize the policy of non-expansion; and
22 while assigned to a post of duty in Manchuria, he
23 assisted his superior, the Commander-in-Chief, only
24 as an administrative officer, when the Army was as

1 he believed maintaining law and order in adherence
2 to the Japan-Manchoukuo Protocol, which he believed
3 to be a legal agreement between independent nations.
4 With regard to Soviet relations, he advocated the
5 necessity of concluding a Japan-Soviet non-aggression
6 pact. At the time of the China Incident he urged its
7 speedy settlement and advised against becoming deeply
8 involved in the territory of the Chinese homeland.
9 Later, in view of the fact, that the incident could
10 not be terminated easily, he advocated requesting
11 the United States and Great Britain to mediate peace
12 between Japan and China. He opposed the conclusion
13 of the tri-partite alliance as being of no advantage
14 to Japan. He was unexpectedly called to assume the
15 joint Premiership, with Admiral YONAI, on the fourth
16 year after the commencement of the Pacific War, and
17 devoted his efforts to the administration of state
18 affairs with the ultimate purpose of terminating the
19 war and restoring peace.

20
21 Such were his beliefs, and such his acts
22 based on such beliefs, carried out in good faith with
23 no ulterior motive nor intention to commit unlawful
24 acts or cause illegal conduct. Neither has he
25 participated in a common conspiracy to commit aggression
against the territory of another country or to commit

1 any of the unlawful acts listed as crimes in the
2 Indictment, nor has he ever initiated, planned, prepared
3 or acted as an accomplice in such acts, nor has he,
4 utilizing his authority, ordered, or permitted such
5 acts.

6 Examining the above, we submit the evidence
7 does not support the grounds upon which the prosecution
8 have indicted KOISO as an accused. He should, therefore,
9 be pronounced not guilty of such charges.

10 We submit the Honorable Members who have
11 been appointed to this Tribunal certainly have been
12 burdened with an onerous and important role.

13 We are of the firm belief that this Tribunal
14 has a noble and grave mission of destiny to judge,
15 according to true and immutable standards of universal
16 justice, the issues upon which the prosecution contend
17 that this defendant is guilty of violations of
18 international law, peace or humanity. By so judging
19 you open the doors of enlightenment and show the right
20 path of justice to the peoples of the world of today
21 and tomorrow.

22 There is a limit to the span of human life.
23 It does not live on forever. But there is eternally
24 no halt, no limit, to the rise and fall of nations
25 and people in the vicissitudes of international

1 situations, and the judgment of the Honorable Members
2 of this Tribunal may well be a guiding star toward
3 the eternal future for our children and our children's
4 children.
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25

1 With deepest respect, Mr. President and Members
2 of the Tribunal, the last wish of this counsel is to ask
3 that you make manifest to the peoples of the world the
4 truth, that the prosecution were not necessarily in all
5 matters in the right and that the accused was not
6 necessarily in all matters in the wrong, and that no
7 man was punished, merely because he was one of the
8 defeated, a Japanese, a former official of Japan and a
9 member of what the prosecution might term the "enemy
10 clique" who caused damage to your people. Who the
11 prosecution might arouse by the passion and prejudice of
12 war, consider could be sacrificed as an example and by
13 way of reprisal for the damage caused by illegal actions
14 of others of the "enemy clique" who are of the same
15 nationality, but with whose crimes we submit this accused
16 was not connected in a way to bear criminal responsibility
17 therefor.

18
19 Furthermore, KOISO did not attend any of the
20 Imperial or liaison conferences or cabinet meetings
21 listed in Appendix E of the Indictment. Therefore, the
22 prosecution's evidence under Counts 4 to 17 is not
23 sufficient to implicate this defendant. KOISO had tried
24 to end the hostilities even though he firmly believed in
25 the Imperial Rescript (Ex. 1240) proclaiming this to be
a legitimate war in the exercise of sovereign rights.

1 KOISO, as a citizen of this country, and un-
2 related in any way with planning, preparing or initiating
3 this war, had no alternative but to place reliance and
4 trust on said Imperial declarations, and in doing so, had
5 no knowledge that he was committing any alleged unlaw-
6 ful act. The prosecution evidence does not prove or
7 indicate that KOISO had knowledge that this was an
8 illegal war as alleged, and, we submit, since the move-
9 ment of armed forces are under the jurisdiction of the
10 High Command, and are controlled exclusively by the Chief
11 of the Army and Navy General Staff, the responsibility
12 for their actions has no connection with KOISO during
13 said time.

14 The defendant KOISO voluntarily presented him-
15 self to the authorities for interrogation and trial, and
16 has co-operated to place the truth before this Tribunal
17 so that his actions might be judged and his name be
18 cleared of any implication that he was knowingly a partic-
19 pant in any dishonorable act or had malicious or unlawful
20 intentions in conducting his duties as a government
21 official. All who have deep understanding concerning suc-
22 matters, after solemn deliberation and reflection, settin
23 aside resentment and prejudice aroused by war, will
24 understand and discern the difference between patriotic
25 devotion to duty and malicious premeditated action.

1 We respectfully submit that being deprived of
2 liberty in Sugamo Prison for more than two years has been
3 an exacting experience for a man of his years and ask
4 that an order be entered summarily dismissing and dis-
5 charging said defendant from custody.

6 Thank you.

7 THE PRESIDENT: Captain Brooks, we will declare
8 the law as we ascertain it and the facts as we find them
9 so far as is necessary for the purposes of our judgment.
10 We are not concerned with the political aspects.

11 These summations are repetitious to a very
12 large extent. Many matters which could have been put in
13 the general summation have been repeated at great
14 lengths in the summations of the individual cases.

15 MR. BROOKS: If your Honor please, this is the
16 second individual summation that I have taken out of
17 turn, and I had hoped to have time to polish it more and
18 develop my ideas a little more, but the time element has
19 prevented us, and I realize there is some repetition in
20 it.

21 THE PRESIDENT: We make due allowance of that.
22 We understand that HOSHINO's is the next case.

23 MR. BROOKS: Mr. MIGITA is ready to proceed.

24 THE PRESIDENT: And that will finish before the
25 mid-morning recess tomorrow?

MR. BROOKS: I think it will.

1 THE PRESIDENT: I have just been informed by
2 my secretary that no further summations after HOSHINO
3 will be ready before Wednesday owing to some processing
4 hold-ups. I propose to look into that during the recess
5 with a view to avoiding any waste of time tomorrow.
6

7 MR. BROOKS: I personally borrowed this paper,
8 your Honor, to process this, in order to fill in the gap
9 with the hope that that would be sufficient, but I am
10 afraid it will not.

11 THE PRESIDENT: We will begin HOSHINO's
12 summation after the recess.

13 We will recess for fifteen minutes.

14 (Whereupon, at 1445, a recess was
15 taken until 1500, after which the proceed-
16 ings were resumed as follows:)

17 - - -
18
19
20
21
22
23
24
25

K
a
p
p
l
o
a
u
&
Y
e
l
d
e
n

MARSHAL OF THE COURT: The International

1 Military Tribunal for the Far East is now resumed.

2 THE PRESIDENT: I have been assured by the
3 representative of defense counsel that the processing
4 department is not responsible for any delay in pre-
5 senting the summations. The summations should be
6 presented in time to enable translations to be made
7 for the Member from the U.S.S.R. But for that, I
8 understand, SATO's and MUTO's summations would be
9 ready tomorrow. However, we shall try to overcome
10 that difficulty with a view to avoiding any waste of
11 time.
12

13 Captain Kraft.

14 LANGUAGE ARBITER (Captain Kraft): If the
15 Tribunal please, the following language correction is
16 submitted. Reference: Exhibit No. 1328, page 1,
17 lines 4, 11, 15, 19 and 33, and page 2, lines 3, 7,
18 9 and 10, and record page 11,923, line 19, and page
19 11,924, lines 4, 10, 15 and 16, and page 11,925, lines
20 12, 17 and 23, and page 11,926, line 1. Delete the
21 words "Statistics Bureau" and substitute "Supreme
22 Command."
23

24 THE PRESIDENT: Thank you, Captain.

25 Yes, Counsellor.

MR. MIGITA: Mr. President and Members
1 of the Tribunal:

2 In presenting the defense summation of
3 HOSHINO, Naoki, we begin with:

4 A. Manchuria Period.

5 1. From July 1932 to December 1936.

6 HO-1. HOSHINO was a career civil servant.

7 On graduating from the University in 1917, he immed-
8 iately entered the Finance Ministry, where he continued
9 to serve until he left for his new post in Manchukuo
10 in 1932.^{a.}

11 HO-2. In June 1932, when a request for
12 expert assistance came from the newly-formed Govern-
13 ment of Manchukuo to the Japanese Finance Ministry,
14 HOSHINO was merely a section chief in that Ministry.
15 He was accordingly asked to go to Manchuria by TAKA-
16 HASHI, the liberal Finance Minister who was assassinated
17 in the February 26 Incident in 1936, and other superiors
18 in the Ministry, but he at first declined because of
19 the illness of his father and of some other family
20 circumstances. Eventually, however, he decided to
21 go as he had been persuaded to do so by his superiors and
22 friends.^{a.}

23 HO-1.
24 a. Ex. 109.

HO-2.
a. Ex. 3209, Tr. 29101-2.

HO-3. HOSHINO went to Manchukuo with

1 several other officials including TANAKA, Shizuka,
 2 who later became Chief of the Finance Bureau in the
 3 Department of Finance of Manchukuo. When they took
 4 leave of Premier SAITO, Makoto, who also was assas-
 5 sinated in 1936, he instructed them that they would
 6 be going over to Manchukuo not as Japanese officials
 7 but to become the servants of Manchukuo and to keep
 8 this fact always in mind while in this service.^{a.} It
 9 is the submission of the defense that all the evidence
 10 concerning HOSHINO's conduct in Manchukuo has clearly
 11 demonstrated the fact that he faithfully adhered to
 12 this instruction of Premier SAITO by loyally performing
 13 his duties toward Manchukuo and its people.

15 HO-4. He arrived in Manchukuo on July 17,
 16 1932, and was appointed Chief of General Affairs
 17 Bureau in the Finance Department.^{a.} It was then
 18 almost a year after the Manchurian Incident and four
 19 months after the foundation of the state of Manchukuo.
 20 By this time, as the Lytton Report describes, the
 21 administrative and financial foundation of the new
 22 state had been roughly laid, and the Central Bank of
 23 Manchu had been operating since July 1.^{b.}

25 HO-3.

a. Ex. 2475, Tr. 20462.

HO-4.

a. Ex. 109.

b. Ex. 57, Tr. 97-103.

HO-5. The Manchukuo Government had then
1 eight departments under the Prime Minister, namely,
2 Departments of Civil Administration, Education,
3 Finance, Communication, Industry and Commerce, etc.^{a.}
4 The Chief of the General Affairs Board was then
5 KOMAI, Tokuzo.^{b.} Minister of Finance was Hsi Hsia;
6 its Vice-Minister was Sun Chi-chang. The Finance
7 Department consisted of three bureaus, namely,
8 Finance, Taxation, and General Affairs. The duty of
9 the General Affairs Bureau was to maintain the co-
10 ordination and unification of the business with all
11 other bureaus, but without any authority to direct
12 the other bureaus.^{c.} At that time, there were twenty-
13 seven bureaus altogether in the eight departments and
14 therefore, HOSHINO's position was one of the twenty-
15 seven bureau chiefs. He held this position until
16 June 1936, when he was appointed Vice-Minister of
17 Finance.^{d.}

HO-5. The evidence discloses that in his
20 finance post HOSHINO worked hard for much-needed
21 financial reforms which mission he was called upon to
22 perform. These reforms were unification of the
23

HO-5.

- 24 a. Ex. 437.
25 b. Ex. 453-A, Tr. 5136.
c. Ex. 2475, Tr. 20463.
d. Ex. 109.

monetary system, reform of the financial organization,
the institution of a fair accounting system, and re-
duction and equalization of taxes on the people.^{a.}

The Lytton Report recommended these reforms as desir-
able but doubted the possibility of their realization.^{b.}

Evidence further shows that in his position
HOSHINO rendered much assistance to the abrogation of
unequal treatment existing between Japanese residents
and Manchurians. In June 1936, the treaty concerning
the residence of Japanese subjects, taxation, etc.,
was concluded between Manchukuo and Japan.^{c.} This
was made as the first step toward the entire abolish-
ment of the extra-territoriality rights enjoyed by
Japan in Manchukuo.^{d.} This treaty specifically pro-
vided that:

1. Japanese subjects shall be governed
within the territories of Manchukuo by the adminis-
trative laws and ordinances thereof concerning taxa-
tion, industries, etc., and these laws and ordinances
shall operate within the South Manchurian Railway
Zone on the principles of statutus melius.

2. Japanese corporations would also be

HO-6.

- a. Ex. 3211, Tr. 29121-2.
b. Tr. 2852-3.
c. Ex. 237, Tr. 2944.
d. Tr. 3945.

subject to the same laws and ordinances of Manchukuo.

1 In return for the above concessions, the
2 Manchukuo Government, of course, undertook to give
3 Japanese residents equal rights with those held by
4 the Manchurians. The prosecution brings out this
5 part of the provisions only. However, it is submitted
6 that a reading over of all the provisions of this
7 treaty and the supplementary agreements clearly shows
8 that the chief aims of these agreements were the re-
9 linquishment of the privileges on the part of Japan.
10

11 As the treaty was to affect the Japanese
12 interests in Manchuria very much, there had been a
13 strong opposition from some circles of the Japanese
14 authorities and various Japanese quarters on the
15 ground that the time was still immature. The strongest
16 of these came from the Japanese residents, whose
17 taxes would be increased considerably as the result
18 of this treaty.^{f.}
19

20 HOSHINO participated in this matter because
21 of his duty relating to taxations and he advocated
22 the signing of the treaty as soon as possible and made
23 efforts to mollify the discontented Japanese residents
24 with the end in view of a sound development of

25 HO-6.

f. Tr. 29123.

1 Manchukuo and the impartial sharing of the burden by
2 both Japanese and Manchurians. (ibid).

3 HO-7. It is submitted that all the evidence
4 relating to his activities in this period shows
5 that HOSHINO did faithfully carry out the duty
6 assigned to him as a civil servant by the laws of
7 Manchukuo which had been already in existence; it
8 also discloses that in his position he did contribute
9 to a large extent to the welfare and prosperity of
10 Manchukuo and Manchurians. His relation to the Kwan-
11 tung Army which he held in his capacity as bureau
12 chief or Vice-Minister in the administration of
13 Manchukuo does not, in the submission of the defense,
14 implicate him in any conspiracy alleged to have
15 existed to wage aggressive war. This subject the
16 defense will deal with later.

17 2. HOSHINO as Chief of the General Affairs
18 Board, from December 1936 to July 1940.

19 HO-8. In December 1936, HOSHINO was made
20 Chief of the General Affairs Board of Manchukuo. This
21 post had been held since the foundation of Manchukuo
22 by KOMAI, ENDO, NAGAOKA and ODATE, and on the resigna-
23 tion of ODATE, HOSHINO was appointed to fill the
24
25

vacancy as the fifth Chief.^a By this time, the foundation of the state had been firmly laid and its foreign relations, including those with Japan, had generally been settled. Manchukuo had entered into a stage of internal construction and economic development.^b The agreement concerning the Japan-Manchukuo Joint Economic Committee^c had been already reached in July 1935 and the Five-Year Industrial Plan^d already formulated.

HO-9. Regarding the circumstances of HOSHINO's appointment as Chief of the General Affairs Board, witness MATSUKI, who had served in the Manchukuo Government since 1932 and later became Deputy Chief of the same board under HOSHINO stated in substance that in that stage of internal construction and development the Manchukuo Government became in need of a financier and economist who could render assistance to the Premier. Therefore, in view of this need and his long experience in the Manchukuo Government, HOSHINO was chosen for the post on the recommendation of his predecessor and the Premier.^a

HO-8.

- a. Ex. 453-A, Tr. 5136.
- b. Ex. 3210, Tr. 29107.
- c. Ex. 851, Tr. 8433.
- d. Ex. 445.

HO-9.

- a. Tr. 29107.

HO-10. As Chief of the General Affairs Board, HOSHINO was subject to the Premier's direction,^{a.} and he attended to his business, in obedience to Premier Chang's direction and decision, rigidly within the limits of his duty, and had never decided anything on behalf of the Premier.^{b.} He had due regard for the opinion of Manchurians, so much so that he was criticized for it, and no important matters were disposed of without consultation with the Manchurian Deputy Chief, Ku Tsu-hsiang, (ibid) who secured this position as the first native Manchurian through HOSHINO's recommendation and effort. He caused many Japanese high officials in the General Affairs Board to be replaced by Manchurian officials,^{c.} saying that the latter should play a greater part.^{d.} He contributed to the elimination of the salary discrimination between Japanese and native Manchurian officials.^{e.}

HO-11. Concerning the policy of Manchukuo, witness TANAKA, Shizuka, stated that it was its definite policy to treat all of its citizens equally

HO-10.

- a. Tr. 29106, Tr. 5135.
- b. Tr. 29108.
- c. Tr. 29108.
- d. Tr. 29142.
- e. Tr. 29109.

and priority was never accorded to any of them.^{a.}

1 He further stated that the Government made special
2 effort to encourage the investment by Manchurians in
3 case of such shares as Manchu Electric Company which
4 was deemed promising. (ibid). Evidence discloses
5 that the Government of Manchukuo strictly required
6 that any corporation coming therein should have to
7 be incorporated under the laws of Manchukuo, regard-
8 less of where the corporation came from. Prosecution
9 exhibit 445 clearly shows that the Government of
10 Manchukuo endeavored to improve the private economy
11 of its citizens; it assisted farmers and middle-
12 class and small scale enterprisers to get loans at
13 the reduced rate of interest;^{b.} it strove for lighten-
14 ing the burden of the people, supplying commodities
15 at low prices, and providing work to the unemployed.^{c.}

17 HO-12. 1. HOSHINO, as Chief of General
18 Affairs Board, worked hard for the furtherance of
19 this policy of the Government. Witness MATSUKI stated
20 that HOSHINO paid much attention to the stabilization
21 of the lives of the people, and too much care to guard
22 them against the afflictions caused by the European

24 HO-11.

25 a. Ex. 3214; Tr. 29141.

b. Tr. 20454.

c. Tr. 20452.

1 War and China Incident.^{a.} A great deal of evidence
2 was adduced to demonstrate HOSHINO's attitude of
3 fairness and nondiscrimination on the question of
4 whether Japanese or Manchurian interest came first
5 there. ISHIWATA, MATSUKI and TAKAKURA testified to
6 his having been criticized for being too pro-
7 Manchurian rather than pro-Japanese.^{b.} HOSHINO
8 sought to lower tariffs in favor of Manchukuo,^{c.}
9 and sought to sell Manchukuo's products to Japan
10 as dearly as possible and to buy goods from Japan
11 as cheaply as possible,^{d.} and in general try to
12 prevent any policy he considered adverse to the
13 interest of Manchuria from being carried out.^{e.} In
14 the interrogation by the prosecution, HOSHINO states
15 that great efforts were made to sell shares of newly
16 established companies among the population in
17 Manchukuo.^{f.}

18
19
20
21 HO-12.

- 22 a. Tr. 29110.
23 b. Tr. 29103, Tr. 29109, Tr. 29117.
24 c. Tr. 29103.
25 d. Tr. 29103, Tr. 29111.
e. Tr. 29130, Ex. 3212-A.
f. Ex. 3212-A, Tr. 29130.

2. According to witness OBATA, HOSHINO
welcomed foreign capital into Manchuria which was
sincerely interested in building up its economy.^g
This witness went on to say that it became easier for
all business men to conduct business matters in Man-
chukuo after HOSHINO became Chief of the General
Affairs Board. (ibid)

HO-13. In November, 1937, a complete aboli-
tion of Japan's extra-territoriality rights and trans-
fer of the administrative power over the South Manchurian
Railway Zone was effected.^a Although this complete
transfer had been agreed upon in the treaty of June, 1936,
there was much opposition to its being carried out on
the ground that various administrative and judicial
systems of Manchukuo were not yet complete. HOSHINO,
as Chief of the General Affairs Board, exerted more
strenuous effort than ever to make necessary prepara-
tions on the part of Manchukuo, and to persuade the
Japanese authorities to agree to the projected plan
for the complete abolition of the extra-territoriality.^b
This abrogation of the extra-territoriality resulted in
completely abolishing long-standing discriminative
treatment between the Japanese and the Manchurians and

HO-12. g. Tr. 29,140

HO-13. a. Ex. 2476-A, Ex. 2476-D; tr. 20,473

b. Ex. 3211; tr. 29,124

in contributing greatly to the economic development of Manchukuo. (ibid) As prosecution exhibit 384 shows, the Manchukuo Government became able to extend stringent narcotic control over the South Manchurian Railway Zone which it could never have done but for the transfer of the Japanese police power over this zone.^c

HO-14. 1. As to HOSHINO's activities as a member representing Manchukuo for Japan-Manchukuo Joint Economic Conference, the prosecution draws an unreasonable inference from the discussions in the Privy Council meeting held in relation to the setting up of this Committee.^a The discussions in the Privy Council meeting and especially HIROTA's talk therein, we submit, were merely talks conducted in the secret chamber in Tokyo in 1936 with which Manchukuo and particularly HOSHINO had nothing to do. Moreover, as the prosecution admits and quotes, HIROTA's opinion was expressed on an extremely imaginary basis such as in case the Manchukuo members of the committee should purposely scheme to act against Japan's interest, the Chief of the General Affairs Board will take proper measures after giving due consideration to the interests of both countries.^b

HO-13. c. Tr. 4734-37

HO-14. a. Ex. 850; tr. 8417
b. Tr. 8430

1 It is clear from this that even in such an
2 extreme case, which was most unlikely to happen, what
3 HIROTA expected the Chief of General Affairs Board to
4 do was to take proper measures in the interests of
5 both countries.

6 Therefore, in the submission of the defense
7 the Privy Council Record in question does not serve in
8 the least as evidence showing the actual manner and
9 method in which the said Committee functioned, much
10 less as evidence relating to an actual attitude of
11 HOSHINO, who used to protect the Manchurian interest
12 so much that he was often criticized as "pro-Manchurian."

13 2. Moreover, in the view of the defense, the
14 setting up of this Joint-Economic Committee and the
15 said Privy Council discussions relating thereto serve
16 to show that Manchukuo and Japan stood mutually in give
17 and take relationship in the matters of trade and in-
18 vestment.

19 HO-15. Manchukuo Five-Year Industrial Plan

20 1. The plan was jointly formulated by the
21 authorities of the South Manchurian Railway Company
22 and Manchukuo, upon the result of the basic researches
23 which they had conducted for some years past.^a The
24

25 HO-15. a. Ex. 2472; tr. 20,421

1 formulation of the plan was first started around the
2 summer of 1936 and completed in November of the same
3 year.^b

4 HOSHINO, who was then Vice-Minister of Fin-
5 ance, participated in the preparation of the financial
6 part of the plan.^c He was one of the many people from
7 the South Manchurian Railway Company, the General
8 Affairs Board, and the Department of Industries and
9 Commerce, etc. The Kwantung Army rendered its good
10 offices to effect a smooth progress of the joint plan-
11 ning.^d

12 2. The objective of the plan was to achieve
13 overall development of basic industries as well as
14 agriculture, transportation, and communications. The
15 reasons for formulating such a plan were many; it was
16 then considered necessary to develop industries under
17 a co-ordinated plan instead of in a haphazard way,^f
18 and a reported success of first and second five-year
19 plans of the Union of Socialistic Soviet Republics
20 offered a hint for such a long-range planning.^g Prose-
21 cution exhibit 445 is definitely clear in stating that
22 the Five-Year Industrial Plan aimed to establish and
23

24 HO-15. b. Ex. 2472; tr. 20,422
25 c. Ex. 453-A; tr. 5126
d. Ex. 2472; tr. 20,422
e. Ex. 2472; tr. 20,424
f. Ex. 453-A; tr. 5126
g. Tr. 20,421

1 expedite important industries and to promote national
2 economy. ^h Witness OKUMURA, who represented the South
3 Manchurian Railway Company in drafting the plan,
4 stated, "It was, of course, considered that the plan
5 would contribute toward the national defense, but at
6 the same time it was believed as a necessary step to
7 improve the peoples' lives." ¹ Referring to the capital
8 outlay of the plan, only five per cent of the total
9 capital was devoted to munition industries. ^j

10 3. In formulating the production plan, not
11 only the self-supply of materials for the future needs
12 within Manchukuo, but the exports to Japan were taken
13 into account. As to the export of materials to Japan,
14 however, it was only an estimate formed by Manchukuo
15 authorities based upon their own expectations of the
16 probable amounts they would be able to export to Japan
17 in the future. Manchukuo did not have sufficient
18 materials and capital for the execution of the plan,
19 so they had to request assistance from Japan. Accord-
20 ing to witness OKUMURA, the Manchukuo Government
21 immediately after the formation of the plan sent several
22 persons to Japan and had them explain and request from
23 the Japanese Government necessary funds and industrial
24

25 HO-15. h. Tr. 5063
1. Tr. 20,425
j. Ex. 2472; tr. 20,424

1 materials for the plan. ^k KISHI, who was then Vice-
2 Minister of Industry and Commerce of Manchukuo, stated
3 in 1938 that he was also dispatched to Japan for the
4 same purpose. ¹ All the evidence, we submit, has made
5 it clear that the execution of the Five-Year Plan would
6 bring in much benefit to Manchukuo and its people in
7 various ways; namely, development of industries and a
8 modern system of communication and transportation by
9 the capital and materials from Japan, and the turning
10 out of many products available for export which would
11 enrich the people's lives. However, OKUMURA further
12 stated that the Japanese Government, including Manchurian
13 Affairs Board and the War Department, did not show any
14 interest in the plan, and besides, no information was
15 ever given to them of the fact that there would be a
16 similar plan in the War Ministry. ^m

17 4. In our submission, all the evidence
18 relating to the plan offers sufficient refutation of
19 the prosecution's theory that the plan constituted a
20 part of an aggressive scheme of Japan and the Kwantung
21 Army, or that it related to the decisions as to the
22 national policy made on August 11, 1936, and the Japan-
23 ese industrial plans (GG-11).
24

25 FO-15. k. Tr. 20,423
1. Ex. 2474; tr. 20,434
m. Tr. 20,423

The prosecution also argue that the plan was much more than an economic one and that it aimed at the domination of the whole of East Asia. But OKUMURA stated that the plan pre-supposed a state of peace which would enable Manchukuo to devote all of its power for carrying out such a coordinated plan,ⁿ while KATAKURA testified that the plan was very small in its scale.^o The truthfulness of this evidence is demonstrated by the fact that only a half year after its commencement the China Incident broke out, placing a great unexpected obstacle in the course of its execution and eventually causing the revision of the plan.

HO-16. The outbreak of the China Incident was indeed a great surprise and caused deep regret not only to the authorities concerned in the execution of the plan but to all those who sincerely hoped for the healthy development of Manchukuo. KISHI stated in his speech in 1938 that he had to face many unexpected difficulties resulting from the Incident which he had not foreseen at all.^a Witness OKUMURA,^b KATAKURA,^c MUTO,^d and TANAKA^e corroborated this evidence. HOSHINO himself stated in the interrogation by the prosecution that the China Incident came as a surprise to him.^f

HO-15. n. Tr. 20,425
o. Tr. 19,040

HO-16. a. Tr. 20,434
b. Tr. 20,425
c. Tr. 19,039
d. Tr. 20,398
e. Tr. 20,471
f. Tr. 29,129

G
r
e
e
n
b
e
r
g
&
R
e
i
c
h
e
r
s

HO-17. As to the revision of the plan made
1 in 1938, its aim was simply to enlarge the original
2 plan by increasing both the items and amount to be
3 produced. A glance at Exhibit 446 makes this fact
4 clear.^a This revision was made to cope with the
5 construction work in Manchuria and to meet the
6 increased demand of Japan which then felt keenly a
7 necessity to reinforce the supply of basic materials
8 so as to stabilize the foundations of economy and
9 national defense in the face of trade difficulties.^b
10 But the revision did not change the character of the
11 original plan at all. The plan as revised was formu-
12 lated upon the expected inflow of more capital and
13 material from Japan and also from foreign countries,
14 particularly from the United States.^c Therefore, it
15 is submitted that the benefit from the revised plan
16 would accrue firstly to Manchukuo and its people as
17 it had from the original plan.
18

19
20 Manchurian Industrial Development Corporation.

21 HO-18. The main purpose for the establish-
22 ment of this corporation was to combine and develop
23 the industries of Manchuria with the aid of foreign
24 capital and industrial technique.^a AIKAWA became the

25 HO-17. a. Tr. 5,083
b. Ex. 2772; T. 20,426.
c. Ex. 446; T. 5090

HO-18. a. Ex. 453-A
T. 5128

President of the Corporation.^b According to the testimony of witness OBATA, one of the inducements offered by AIKAWA was his ability to get in foreign capital, particularly American capital and techniques.^c As the company was formed to take over under its management many of the enterprises which had hitherto been controlled by the South Manchurian Railway Company, there was a considerable number of objections expressed on the part of the Company. Hence, a certain amount of hesitancy came from MATSUOKA, then President of the Company.^d As to the nationality of the Corporation, too, an opinion was expressed by the Company that it should be of Japanese,^e but it was made a Manchukuo Corporation incorporated under the special law of Manchukuo in December, 1937.^f Viewed in this light, the establishment of the corporation brought about the very desirable result of bringing together all important industries in Manchuria under the single management of a Manchukuo corporation. The business concerning formation and operation of the corporation, of course, was within the jurisdiction of the Industrial Department of Manchukuo and HOSHINO as Chief of the General

HO-18. b. Ex. 2475; T. 20,470
 c. T. 29,141
 d. Ex. 453-A; T. 5129
 e. Ex. 453-A; T. 5143-4
 f. T. 5130

Affairs Board assisted in preparing the laws concerning the formation and operation of the corporation. (ibid.) According to the statement by witness TANAKA, Shizuka, who was one of the directors of this corporation, the corporation did its best to obtain investments by industrialists from the United States; it employed Foster Bain, and Brassert Company of the United States respectively to conduct necessary investigations and to map out a plan for enlargement of Anshan Steel Mill which was designed to become one of the biggest in Manchukuo.^g However, unexpected developments of the China Incident completely obstructed the project of inviting foreign investments, which was considered by AIKAWA as his mission. He left the position of the President as soon as his first term was over.^h It is submitted that this evidence makes it clear that the corporation staff and the officials concerned therewith including HOSHINO expected that the China Incident would soon be settled, and that they did not even dream of a war with the United States.

HOSHINO's Speech Made December 3, 1938.

HO-19. The speech in question was made, as is apparent from the date thereof, nearly one and a

HO-18. g. T. 20,470
h. T. 20,471

half years after the outbreak of the China Incident in July 1937.^a By this time the Incident and the policy of the Japanese Government relating thereto had been taking an already crystallized course, with which a mere civil servant of Manchukuo could not do anything but rationalize in case he should be called upon to refer thereto before the public and in his official capacity. In our submission, the speech in its entirety makes it quite clear that what he really hoped for under the circumstances was to turn a misfortune into a blessing, as is expressed in a Chinese proverb; his real view of the situation is clearly shown in his expressed belief that such a "state of affairs would never have been brought about had each and everyone been inspired by the spirit of good neighborliness and harmonious cooperation." It is further submitted that this statement has no such particular significance at all as the prosecution attempts to attach (GG-21).

HOSHINO's Relation to Kwantung Army.

H-20. 1. The liaison between the officials of Manchukuo and the Kwantung Army was established to deal with "many matters" that arose as a result of the Japan-Manchukuo Treaty.^a Therefore, it was the duty

HC-19. a. Ex. 3251-A, p. 1.

HC-20. a. T. 5,121

of all officials of Manchukuo to maintain liaison

1 with that Army whenever they dealt with "such matters".

2 It is quite reasonable to infer that "such
3 matters" were many, especially at the outset of the
4 new State when peace and order had not been established
5 well yet, and for this reason, the liaison between the
6 two parties was constant. It was the case with all the
7 officials of Manchukuo, so it was with HOSHINO. The
8 study of all evidence relating to HOSHINO's liaison
9 with the army shows that his was strictly limited to
10 "such matters".
11

12 The object of the liaison varied according to
13 the nature of the matters concerned. In one instance
14 it was made for moral support^b while the other for
15 understanding,^c but there never was a case where the
16 Kwantung Army dictated to the General Affairs Board.^d
17 The wishes of the former were sometimes laid before the
18 Board. On such occasions HOSHINO as Chief of the Board
19 took the necessary measures under the direction of the
20 respective authorities, but if not considered appro-
21 priate, they were not followed.^e
22

23 Referring to the Five-Year Industrial Plan,

24 HO-20. b. Ex. 453-A; T. 5,124
 c. Ex. 453-A; T. 5,121
 d. Ex. 3210; T. 29,109
25 e. Ex. 3210; T. 29,109

1 the prosecution contends that HOSHINO made a statement
 2 that the Commander of the Kwantung Army made the final
 3 decisions as to what should be included in the Plan.
 4 (GG-11) However, an examination of the transcript shows
 5 that he stated^f that so far as the Kwantung Army was
 6 concerned, not the Chief of Staff but the Commander had
 7 the final say in relation to the Plan. The prosecution
 8 picked one sentence out of a series of sentences.

9 2. As to the scope of the liaison between
 10 the two parties, the prosecution witness TAKEBE who
 11 served as Chief of the General Affairs Board after
 12 HOSHINO stated that, "The Kwantung Army kept strictly
 13 secret from him anything pertaining to operational
 14 plans."^g

15 HO-21. The prosecution stated that witness
 16 TAKEBE testified that HOSHINO acted with the Kwantung
 17 Army in preparation for a war against the Soviet Union
 18 (GG-6). However, he simply stated that HOSHINO in his
 19 activities pertaining to the construction of the
 20 military objects in Manchuria as a military base
 21 against Soviet Union acted in accordance with the
 22 instructions of the Kwantung Army.^a It is suggested

23 HO-20. f. T. 5128

24 g. T. 31,852

25 HO-21. a. Ex. 3371; T. 31840

1 that this statement is very vague, being susceptible
2 of many constructions. In addition to this, this witness
3 stated that all the military installations constructed
4 by Japan in Manchuria had the function of serving the
5 defense purpose.^b

6 In the light of this evidence, it is submitted
7 that the statement of TAKEBE does not sustain the
8 prosecution's contention against HOSHINO at all.

9 HOSHINO's Relation With the Opium Monopoly.

10 HO-22. The prosecution charges HOSHINO with
11 responsibility for securing a loan for Manchukuo in
12 Japan by pledging the opium monopoly profit because
13 his name was signed to the loan agreement. Witness
14 TANAKA testified, however, that HOSHINO was sent to
15 Tokyo by his government together with YAMANARI, Vice-
16 President of the Central Bank of Manchu, to negotiate
17 the loan there, and that the government later decided
18 to secure the loan on the monopoly profit of opium
19 and salt as the security was demanded by the syndicate
20 in Tokyo.^a This witness further testifies that upon
21 the instruction of their Government and in accordance
22 with the Government Ordinance, HOSHINO and YAMANARI

24 HO-21. b. T. 31,845

25 HO-22. a. T. 20,465

signed the loan agreement in Tokyo November 19, 1932.^b

As the dates of Exhibit 375^c and 376^d clearly indicate,
the agreement was signed three days after the promulga-
tion of the Bond Act in Manchukuo with which HOSHINO
had nothing to do. This loan could be duly repaid as
agreed within seven years.^e

HO-23. The prosecution states that HOSHINO
took a leading part in arranging for NAMBA to go to
Manchuria for employment in the Opium Monopoly Bureau
(GG-16). But NAMBA himself stated that he was chosen
by the Finance Ministry for the post in accordance with
the request by the Manchukuo Government.^a It is clear
from prosecution's evidence^b that HOSHINO met NAMBA
only once during his stay in Japan and had "very
general talks" with him about the work to be done.
In view of HOSHINO's position in the Finance Ministry
under which supervision the Monopoly Bureau was placed,^c
it became apparent that he did this in discharging the
duty entrusted by his government after NAMBA had been
chosen for the post by the Finance Ministry of Japan.

1. HO-24. The opium monopoly system of Manchukuo
was based upon what was called a gradual prohibition

HO-22. b. T. 20,466

c. T. 4,685

d. T. 4,685-6

e. Ex. 2475; T. 20,466.

HO-23. a. T. 20,309

b. Ex. 2463,

T. 20,353

c. Ex. 2462,

T. 20,310

policy, and was established after the Formosan system
 which had won national recognition.^a In view of the
 spirit of the Geneva Opium Agreement of 1925^b and in
 accordance with the Report of the Far Eastern Opium
 Commission of the League of Nations,^c such a policy
 of gradual suppression under Government monopoly was
 considered best to be adopted under the opium condi-
 tions in Manchukuo and its surrounding districts.^d

2. It is a fact that the Government obtained
 some revenue from the opium monopoly, particularly
 in its early period, but the final aim thereof
 was the eradication of the evil of opium.^e The
 said Commission of the League of Nations admits the
 fact that many countries in the Far East depended upon
 the revenue from the opium monopoly and only recommended
 that every expense connected with opium should be
 charged against the gross revenue, the net revenue
 should be first applied to cover the expenses connected
 with the campaign against illicit traffic, for education,
 cure of addicts, etc., and the balance, if any, should
 be used for sanitary, social and other purposes.^f

HO-24. a. Ex. 2448; 2449; T. 20,254, 20,258

b. Ex. 2446; T. 20,247

c. Ex. 2447-A; T. 20,252

d. Ex. 2450; T. 20269; Ex. 2462; T. 20,313

e. Ex. 2467-C; T. 20,408

f. Ex. 2453; T. 20,277-8

1 Exhibit 2460-A,^g which is the Manchukuo Government
2 Report on Opium Special Account for 1943, is clear
3 evidence showing that Manchukuo treated the revenue
4 from the opium monopoly strictly in line with this
5 recommendation.

6 3. Soon after HOSHINO became Chief of the General
7 Affairs Board in 1936, he took steps to combat the
8 opium evil, as that was the time to commence the
9 period of stringent control.^h Despite the strong
10 criticisms and widely held belief that opium smoking
11 could not be eliminated in less than 20 years, HOSHINO
12 advocated a 10-year opium elimination policy which was
13 supported by young, native Manchurian officials. He
14 contributed much toward the adoption of the latter
15 policy based upon the program prepared by Yung Chan-Chi,
16 native Manchurian official.^j He opposed the use of
17 opium monopoly revenues for general government
18 expenditures and insisted that prohibition should be
19 carried out without stinting the expense.^k It is
20 submitted that all the evidence relating to this sub-
21 ject has demonstrated the fact that Manchukuo opium
22 policy was a success not only in reducing the number
23

24 HO-24. g. T. 20,305
25 h. Ex. 3211; T. 29,116; Ex. 2465, T. 20373
i. Tr. 29,117-8
j. Tr. 29,120
k. Tr. 29,119

1 of addicts but in eradicating this evil from the home
 2 and social life of the people. The number of registered
 3 addicts, reaching its peak of 590,000 or thereabouts
 4 in 1937^l, went down gradually to something over
 5 200,000^m in 1945.

6 4. Concerning the statement of witness NAMBA,
 7 we suggest there are very few inconsistencies between
 8 the affidavitⁿ he made for the prosecution and the
 9 one he made for the defense^o and particularly on the
 10 details of the opium policies both are entirely consist-
 11 ent.^p As the dates of the affidavits show, the prose-
 12 cution took their's in July 1946, nine months before
 13 that of the defense, but they did not use it in their
 14 case. As to the figures of the net profit from the
 15 opium monopoly, the main issue, we submit, turns upon
 16 the question as to whether or not the maximum thereof
 17 amounted to 30,000,000 yen.^q

18
 19
 20
 21
 22
 23 HO-24. 1. Ex. 2462; T. 20,330
 24 m. Ex. 3211; T. 29,121; Ex. 3154; T. 28,059
 25 n. Ex. 2463
 o. Ex. 2462
 p. Ex. 2463, p. 1-5
 q. T. 20,349

On this point NAMBA reiterated that the
 1 figures were inaccurate since they were based upon his
 2 recollection after ten years, and that around 20 mil-
 3 lion yen would be perhaps the more accurate figure.^r

In view of the corroborating testimony of
 3 prosecution witness TANAKA,^s we suggest that the
 6 Tribunal accept the 20 million yen figure as accurate
 7 so far as the maximum of the net profit was concerned.
 8 Much of the prosecution's evidence on this subject,
 9 related to the period from 1932-38 in which the
 10 registration of the addicts was increasing, and, there-
 11 fore, it cannot be acceptable as showing anything for
 12 the period thereafter when the good effect of the
 13 monopoly system gradually was realized. Evidence
 14 disclosed that in 1943 the net profit from the opium
 15 amounted to only one percent of the total state
 16 revenue.^t

18 HO-25. In reference to the decoration
 19 HOSHINO received in April 1940, he was one among 3
 20 million odd people who were decorated on the same
 21 occasion.^a

22 HO-24. r. Tr. 20,350; 20,356
 23 s. Tr. 15,858.
 24 t. Ex. 2461-A, Tr. 20,322
 HO-25. a. Ex. 3147, Tr. 28,032

25

HO-26. In our submission, all the evidence
1 relating to this period has also demonstrated the fact
2 that HOSHINO as Chief of the General Affairs Board
3 faithfully discharged his duties strictly within
4 their limits and for the benefit and welfare of
5 Manchukuo and its people. The prosecution did not
6 challenge the evidence of his good work to improve
7 Manchukuo, although they had ample opportunity to do
8 so since a great deal of it was introduced. In spite
9 of much evidence cited by the prosecution in their
10 summation, only a little is considered really to have
11 some direct bearing upon HOSHINO, and this little con-
12 sists mainly of Pu-Yi's testimony and the United States
13 Strategic Bombing Survey Interrogations. Both of the
14 above sources of evidence were relied upon by the
15 prosecution in their attempt to connect up HOSHINO
16 with the charge of domination and exploitation. The
17 former was referred to in pages GG-13 to 14, while
18 the latter in pages GG-3, 8 and 10. Pu-Yi is now a
19 thoroughly discredited witness, and especially his
20 testimony on the details of the Manchukuo administra-
21 tion is, we submit, full of inconsistencies and mis-
22 information in the light of all the evidence. To
23 cite one of the many such instances, he stated that
24 the Manchurians were not allowed to borrow money from
25

1 the banks.^a But, the prosecution exhibit 445 shows
2 that the Manchukuo Government laid various plans to
3 assist the monetary activities of its people by re-
4 ducing the rate of interest.^b Exhibit 2471-A further
5 shows that the district cooperative banking societies
6 under the supervision of the Finance Ministry made
7 about 5,600,000 yen loans to farmers within a few
8 years of their establishment.^c

9 As to the use of the United States Strategic
10 Bombing Survey Interrogation which is recorded in
11 transcript pages 5,152 to 5,180, we submit that it
12 is both unreliable and unfair for the purpose of this
13 Tribunal, and it should, therefore, be disregarded.

14 We do not think it necessary to refer here
15 to the testimony of the witnesses^d or to the argument
16 which we fully set forth relating to this subject.^e

17 In our submission, the prosecution's attempt
18 to prove beyond a reasonable doubt the charges of
19 domination, economic exploitation and aggression
20 against HOSHINO cannot succeed at all in the face of
21 the overwhelming evidence to the contrary.
22

23 HO-26. a. Tr. 4,022
24 b. Tr. 20,454
25 c. Tr. 20,415
d. Ex 3207, Tr. 29,072; Ex. 3203, Tr. 29,086.
e. Tr. 29,096-7

1 B. PLANNING BOARD PERIOD, From July 22, 1940 to
2 April 4, 1941.

3 HO-27. On receiving unexpectedly a telegram
4 from Prince KONOYE, HOSHINO left Manchukuo July 17,
5 1940, arriving in Tokyo on the 20th of the same month.
6 When he called on KONOYE the next day upon his request,
7 HOSHINO was asked to be the President of the Planning
8 Board in the Cabinet then under formation, and he
9 accepted it. It was on the 21st of April, a day be-
10 fore the Investiture of the Second KONOYE Cabinet.^a

11 HO-28. The prosecution makes various con-
12 jectures concerning his appointment (GG 22-25), but
13 in our submission it is altogether an unreasonable
14 inference and unsupported by a bit of the evidence.
15 ISHIWATA, who was a friend of both KONOYE and HOSHINO
16 and had been the Chief Secretary of the preceding
17 YONAI Cabinet, stated that soon after the resignation
18 of the YONAI Cabinet, he was called on the telephone
19 by KONOYE asking for his opinion whether HOSHINO
20 would fit for the post of the President of the Plan-
21 ning Board or not.^a This witness further stated that
22 he replied to KONOYE that HOSHINO would fit in view
23 of his experience in the administrative affairs.^b

25 HO-27. a. Ex. 3655, Tr. 36,179
HO-28. a. Tr. 29,103
b. Tr. 29,104

TOJO stated that in the "OGIKUBO Conference" held
1 before the formation of the KONOYE Cabinet, selection
2 of the Cabinet members was entirely left with KONOYE.^c
3

4 HO-29. As to the result of KONOYE's choice
5 nearly all the members of the Cabinet were found to
6 be new men.^a Among the twelve members, only Navy
7 Minister YOSHIDA, who was remaining in the same post
8 over from the YONAI Cabinet, and the Minister of
9 Home Affairs YASUI had held a ministerial position.
10 None of the others had ever held even a position of
11 vice-minister except TOJO and ISHIGURO, the Minister
12 of Agriculture and Forestry. However, concerning
13 HOSHINO himself, it was not an unusual promotion in
14 view of the facts that his contemporaries in the
15 Finance Ministry, like KAYA, ISHIWATA and AOKI, had
16 already held Cabinet appointments.

17 HO-30. In short, Prince KONOYE's scheme
18 seemed to be to pick up a new man of ability from
19 wider circles without paying any regard to his former
20 appointment. The prosecution tries to attach par-
21 ticular significance to the entering into this
22 Cabinet those who had been in Manchuria for some time.
23 However, in view of MATSUOKA's having been appointed
24

25 HO-23. c. Tr. 36,179

HO-29. a. Exhibit 3160

1 the Cabinet Councillor in the First KONOYE Cabinet
2 in 1937 and having remained in the same position for
3 a long period as his personal record^a shows, it would
4 be a reasonable inference that KONOYE decided to have
5 him as Foreign Minister in his own discretion. Of
6 MATSUOKA's choice of OHASHI as the Vice-Minister of
7 Foreign Affairs, witness SATTO stated that it was
8 MATSUOKA's own personal decision.^b

9 HO-31. At that time Japan was confronted
10 with a very difficult situation both inwardly and
11 outwardly. The China Incident had been in progress
12 for over three years and the World War II was continu-
13 ing to spread since its outbreak in September 1939.
14 KONOYE's appointment dropped HOSHINO into the midst
15 of this difficult situation in Japan which was in
16 no way brought on by him. To use words employed by
17 the learned Chief Prosecutor in his opening statement,
18 HOSHINO at this stage was "confronted by a condition,
19 not a theory."
20

21 HO-32. Before the formation of the Cabinet,
22 in the "OGIKUBO Conference" an agreement had been
23 reached already concerning national defense, diplomacy
24 and internal administration among KONOYE, TOJO,
25 YOSHIDA, and MATSUOKA, who later became four important

ministers of this Cabinet.^a The essentials of this
 1 agreement formed the nucleus of what was later pre-
 2 sented as the outline of basic national policy.^b
 3 Evidence discloses that this "Four Ministers' Con-
 4 ference" continued practically to decide upon the
 5 most important matters of policy. Diplomatic policy
 6 was left in the hands of Foreign Minister MATSUOKA,
 7 who was a man of great self-confidence and did
 8 everything by himself, rarely asking the advice of
 9 others.^c

11 HO-33. As is shown by much evidence,
 12 KONOYE's main concern was to settle the China Inci-
 13 dent with an utmost effort,^a and he believed that
 14 the friendly relations with America and Britain was
 15 extremely essential to the ultimate solution of the
 16 China Incident.^b

17 HO-34. As President of the Planning Board
 18 HOSHINO was under the jurisdiction of the Premier.^a
 19 The duty of the Planning Board, briefly stated, was
 20 to draft an economic plan^b and make general arrange-
 21 ment of the various departments.^c However, as the

23 HO-32. a. Ex. 3655, Tr. 36,178
 24 b. Tr. 36,179
 c. Ex. 3588, Tr. 34,958

HO-34.
 a. Ex. 71
 b. Tr. 5,131
 c. Tr. 5,148

25 HO-33. a. Ex. 3655, Tr. 36,178
 b. Tr. 36,186

1 prosecution witness Liebert admitted, the Board made
 2 plans only and submitted them to the Premier; the
 3 final decision was always made by the Cabinet and
 4 executed by the ministries concerned.^d The Board
 5 was, to the end, the Premier's staff and had no
 6 authority to give orders to the other government
 7 offices,^e and it could only request them to furnish
 8 data or explanation as might be necessary.^f

9 HO-35. Simultaneously with the appointment
 10 as the President of the Planning Board, HOSHINO was
 11 made a Minister of State without Portfolio. But he
 12 was not, of course, the head of an executive branch
 13 of the government. So far as the Privy Council Meet-
 14 ing was concerned, he could attend it in the capacity
 15 of an "explainer." An "explainer" was a person or-
 16 dered to attend the meeting to assist one of the
 17 regular members; he could not attend of his own
 18 right, could not vote and could only speak when called
 19 on to make an explanation by the President.^b The
 20 prosecution exhibit 1103^c clearly shows that HOSHINO

21 HO-34. d. Tr. 8,731

22 e. Ex. 2802, Tr. 25,205.

23 f. Ex. 71, page 2

24 HO-35. a. Ex. 109

25 b. Ex. 3213, Tr. 29,134-36; ex. 3220,
 Tr. 29,197.

c. Ex. 1103

1 did not attend any of the Liaison Conferences held
2 within a period from January 1941 up to his resig-
3 nation in April.

4 THE PRESIDENT: We will adjourn until nine-
5 thirty tomorrow morning.

6 (Whereupon, at 1600, an adjourn-
7 ment was taken until Tuesday, 23 March,
8 1948 at 0930.)

9 - - -
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25